

Article

The experience of discretion: a study with career managers in public service


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The discretion of public agents has been gaining importance as an object of study because it is a relevant issue in the management and implementation of policies. Public servants face discretionary decisions in various ways, ranging from the construction of creative ways to generate good social impacts to, at the extreme limit, inaction for fear of subsequent blame for conduct considered improper. This study sought to understand how the experience of discretionary public servants in management careers takes place and their dilemmas. Qualitative research was carried out with specialists in public policies from the state of São Paulo and government managers from the state of Pernambuco. Field research included data collection through 5 focus groups and content analysis. The results show that the main dilemma faced by bureaucrats refers to decision-making based on their competence and current knowledge or inaction for fear of punishment if the decision is judged as illegal or in bad faith. Consequently, there is the so-called “*apagação das canetas*,” i.e., a decision paralysis. There is a constant trade-off between discretion and blame, and public servants develop strategies to mitigate the risks of being sanctioned.

Keywords: discretion; experience; blame; decision paralysis; trade-off.


A experiência da discricionariedade: um estudo com membros das carreiras de gestão

A discricionariedade dos agentes públicos vem ganhando importância como objeto de estudo por ser questão relevante na gestão e implementação de políticas públicas. Servidores públicos enfrentam decisões discricionárias de formas variadas, indo desde a construção de modos criativos para gerar bons impactos sociais até, no limite extremo, à inação, por medo de posterior responsabilização por conduta considerada indevida. Este estudo buscou compreender a experiência da discricionariedade para os servidores de carreiras de gestão e os dilemas existentes nessa atuação. Para tanto, procedeu-se a pesquisa qualitativa com especialistas em políticas públicas do estado de São Paulo e gestores governamentais do estado de Pernambuco. A pesquisa de campo englobou coleta por meio de 5 grupos focais. Na sequência, os dados foram analisados por meio da técnica da análise de conteúdo. Identificou-se que o principal dilema enfrentado pelos burocratas se encontra entre decidir dentro de sua competência e no melhor de seu conhecimento ou a inação, por medo de responsabilização, caso a decisão

DOI: <https://doi.org/10.1590/0034-761220230209x>ISSN: 1982-3134 

Article received on June 25, 2023 and accepted on April 26, 2024.

[Translated version] Note: All quotes in English translated by this article's translator.

Editor-in-chief:Alketa Peci (Fundação Getulio Vargas, Rio de Janeiro / RJ – Brazil) **Associate editor:**Gabriela Spanghero Lotta (Fundação Getulio Vargas, São Paulo / SP – Brazil) **Reviewers:**Maria Stela Reis (Ministério da Educação, Brasília / DF – Brazil) Vera Cristina Caspari Monteiro (Fundação Getulio Vargas, São Paulo / SP – Brazil) Cintia Rodrigues de Oliveira (Universidade Federal de Uberlândia, Uberlândia / MG – Brazil) 

One of the reviewers did not authorize the disclosure of their identity.

Peer review report: the peer review report is available at this [URL](#).

seja julgada como ilegal ou de má-fé. Por consequência, tem-se o chamado “apagão das canetas”. Há um constante *trade-off* entre a discricionariedade e a responsabilização, havendo meios pelos quais os servidores se valem para atenuar os riscos de sofrer sanções.

Palavras-chave: discricionariedade; experiência; responsabilização; apagão das canetas; *trade-off*.

La experiencia de la discrecionalidad: un estudio con miembros de carreras gerenciales

La discrecionalidad de los agentes públicos ha ido cobrando importancia como objeto de estudio por ser un tema relevante en la gestión e implementación de políticas públicas. Los servidores públicos enfrentan decisiones discrecionales de diversas formas, que van desde la construcción de formas creativas para generar buenos impactos sociales hasta, en el límite extremo, la inacción, por temor a la responsabilización posterior por su conducta considerada impropia. Este estudio buscó comprender la experiencia de la discrecionalidad en los servidores públicos de carreras gerenciales y los dilemas existentes en ese desempeño. Para ello, se realizó una investigación cualitativa con especialistas en políticas públicas del estado de São Paulo y gestores gubernamentales del estado de Pernambuco. La investigación de campo incluyó la recolección a través de 5 grupos focales. A continuación, los datos se analizaron mediante la técnica de análisis de contenido. Se identificó que el principal dilema que enfrentan los burócratas es entre decidir dentro de su competencia y a su leal saber y entender o la inacción, por temor a la responsabilización, si la decisión es juzgada como ilegal o de mala fe. En consecuencia, existe el llamado “apagón de bolígrafos”. Existe un constante *trade-off* entre la discrecionalidad y la responsabilización, y existen medios a los cuales los funcionarios recurren para mitigar los riesgos de ser sancionados.

Palabras clave: discrecionalidad; experiencia; responsabilización; apagón de bolígrafos; compensación.

1. INTRODUCTION

Discretion is a critical tool for achieving the objectives set by policymakers, as highlighted by studies on street-level bureaucracy (Lipsky, 2010). However, understanding how public servants experience discretion when they need to exercise it remains a field that requires further exploration. Beyond definitions based on administrative law literature (Mello, 2012) or the instrumental rationality of state bureaucracy (Weber, 2000), this study seeks to understand discretion as it relates to the work experiences of public servants. This research reveals that discretionary action can range from providing a margin of freedom for creative and intelligent decision-making to being a space to be avoided, as it may lead to blame/accountability¹ by oversight bodies.

Thus, it is essential to understand how discretion is experienced in ambiguous situations. On one hand, discretion is crucial for implementing public policies and can motivate public servants. On the other hand, it can be uncomfortable and may lead to standardized actions or, in extreme cases, result in inaction, causing what was called by Brazilian scholars in Portuguese “*apagão das canetas*” or “pen blackout” (Di Mendonça & Carvalho, 2022). This phenomenon occurs when public managers fear administrative disciplinary actions, resulting in decision-making paralysis within the public service (Santos, 2021). According to Santos et al. (2022), dysfunctional controls that instill fear of being blamed among public servants create environments that discourage creative actions.

Adding to the complexity of discretion as an experience, public servants operate within bureaucratic structures that impose not only adherence to laws but also hierarchy and control. These factors can become constraints on bureaucratic actions, leading officials to prioritize how processes are executed over the intended outcomes (Merton, 1970). In the field of administrative law, there has historically been a strong emphasis on the performance of control bodies, either due to their diligence or the fear of sanctions (Campana, 2017). As Evans and Hupe (2020) argue, freedom and control are mutually

¹ The term “accountability in the public sphere” refers to the investigation and potential sanctioning of actions that violate public administration principles, as outlined in the Anti-Corruption Law (Law No. 12846/2013).

restrictive, which means that neither total control nor absolute freedom is possible. For the authors, discretion resides within this gap between control and freedom.

This study was motivated by a desire to understand what leads public servants to act differently when faced with discretionary situations. Even under the guidance of the law, some moments require interpretation, judgment, and decision-making by public agents; actions that can be bold or conservative and strict when it comes to interpreting regulations. To contribute to the understanding of what it means to be a public servant in Brazil, this study poses the question: How do public servants experience discretion, and what dilemmas do they face in such situations?

To explore this, government managers from the state of Pernambuco and public policy experts from the state of São Paulo were selected as research subjects. The aim was not to conduct a comparative analysis between the chosen groups but rather to expand knowledge about the experience of discretion in management careers, recognizing that each state has different arrangements.

The article is organized into six parts. The first is this introduction; the second reviews the literature on discretion; the third outlines the methodological approach taken in the research; the fourth details the findings; the fifth discusses the results; and, finally, the sixth provides the conclusion of the study.

2. FIELDS OF STUDY ON DISCRETIONARITY

Evans and Hupe (2020) identify four distinct perspectives from which discretion has been studied: legal, economic, psychological, and sociological.

From a legal standpoint, discretion can be viewed from a narrow legal approach or from a socio-legal perspective. Based on a narrow legal approach, “discretion is seen as uncontrolled, arbitrary, and capricious.” Therefore, it poses a problem for the law and should be avoided (Evans & Hupe, 2020, p. 114). In contrast, the socio-legal perspective seeks to understand how discretion operates in practice, emphasizing the importance of informal systems and social factors in the exercise of discretion. According to Lotta and Santiago (2018), this approach begins with an interpretative analysis by the agent, viewing discretion as a space for legal choices within existing rules. From the perspective of Brazilian administrative law, discretion is seen as a choice granted by law, stemming from the “deliberate intention by the legislator to grant freedom to the administration” (Mello, 2012, p. 1041), acknowledging that laws cannot encompass all practical situations (França, 2012).

Mascini (2020) discusses and criticizes the “legal paradigm” in the study of discretion, which assumes that discretion should be avoided as it is an action not prescribed by the norm, thereby posing a threat to the legitimacy and predictability of decisions. According to the legal paradigm, discretion is deemed unnecessary. This perspective is reflected in public management literature, as noted by Pires (2009, p. 152), where debates in political science and public administration often emphasize the fear of tyranny and abuse of power by bureaucracies and the risks associated with unchecked decision-making, rather than the potential benefits of the responsible exercise of discretion.

From an economic perspective, discretion is analyzed through the principal-agent framework, where it is seen as a balancing mechanism between social demands and the normative framework of formulated policies (Evans & Hupe, 2020). The traditional view of the principal-agent relationship assumes rationality and uniformity in the interests of the parties. However, it is now recognized that various factors influence discretionary actions, making it a complex process. In this contemporary understanding, discretion is considered a space where public servants can act creatively to implement

planned actions in response to social demands, while also being subject to oversight and monitoring to ensure responsiveness (Evans & Hupe, 2020).

From a psychological perspective, the focus is on understanding the attitudes and behaviors of public servants toward the policies they must implement. This includes examining instances of “policy alienation,” where public servants either do not see the feasibility of implementing a policy or do not agree with it, leading to “coping” or “bending the rules” (Evans & Hupe, 2020, p. 116). Emphasizing the study of street-level bureaucracy (Lipsky, 2010), this perspective identifies various attitudes, such as breaking the rules or bending them to make policy implementation more flexible or, on the contrary, rigidly complying with the rules. Evans and Hupe (2020) note that similar to street-level bureaucrats, managers are also subject to these issues, warranting further analysis. May and Winter (2007) highlight that public agents’ understanding of policy objectives and rules, as well as their knowledge, are crucial factors influencing decision-making.

Finally, from a sociological perspective, the focus is on individual factors that influence an agent’s discretion, considering that identity, perception, and judgment shape their performance. Studies in this area may explore how public servants act or how organizations shape individuals to conform to expected roles (Evans & Hupe, 2020). Research can also investigate elements that influence bureaucratic choices (Ferreira & Medeiros, 2016) or examine how moral and social norms, as well as interactions, affect decision-making (Eiró, 2017; Pires & Lotta, 2019).

Discretion, understood as the ability to adapt rules to real-world situations, has become a prominent topic in public administration studies due to its significance in understanding the decisions made by public agents and their impact on policies (Lotta & Santiago, 2018). Bureaucrats often act by balancing the adequacy of rules with their own subjective judgment to fulfill their duties (Ferreira & Medeiros, 2016). When rules lack clarity, they make decisions based on the resources available to meet existing demands (Oliveira, 2012).

While it is acknowledged that the exercise of discretion is both inevitable and necessary, there remains a concern about potential abuse of power or self-interest by bureaucrats (Oliveira, 2012). This concern points out the need for appropriate limits and controls on discretionary actions. However, discretion is also seen as an opportunity for bureaucracy to implement innovations, mobilize people, and enhance organizational effectiveness, making processes more adaptable and efficient (Andhika, 2018; Pires, 2009). This has led to a debate within the literature: some argue that bureaucrats’ actions should be tightly controlled and limited, while others warn against the negative impact of excessive controls on the quality of public service delivery (Oliveira, 2012; Pires, 2009).

Recent studies highlight issues of administrative paralysis and fear of making decisions, suggesting that excessive controls can restrict public servants’ freedom of action and hinder efficiency (Guimarães, 2016; Mendonça & Carvalho, 2022; Santos, 2021; Santos et al., 2022). Campana (2017) notes that while control is necessary to prevent arbitrary or illegal practices, it alone cannot achieve this goal. The problem often lies in the “disorderly form” and “irreducible rigidity” of control mechanisms. The former issue arises from competition among various control bodies, which may investigate the same case independently, while the latter stems from a punitive focus that disregards the specific circumstances and justifications of the case. Guimarães (2016) criticizes this “cult of control,” arguing that the inflexible application of rules by control bodies without consideration of the intended outcomes leads to increased administrative inefficiency. This rigidity pushes public servants toward the least risky course of action, often resulting in inertia.

Discretion, therefore, encompasses the agents' risk of being blamed when their choices do not result in the best outcomes – from the controlling actors' point of view – leading to a constant trade-off between avoiding blame and exercising discretion. On one hand, this trade-off can lead bureaucrats to forgo discretion out of fear of being blamed, even when they desire to exercise it. On the other hand, those who seek discretion may develop strategies to enable their actions while minimizing the risk of being blamed. Hood (2020, p. 30) describes three main strategies that bureaucrats use to manage this trade-off: “the pooling of discretion to share blame, the partial or apparent delegation of discretion in order to transfer or diffuse blame, and the validation of discretion as another means of spreading or sharing blame.”

The first strategy combines decision-making among multiple agents to share blame. The second strategy involves a superficial delegation of discretion to external bodies, which can obscure the boundaries for blame. The third strategy involves seeking external or semi-external validation, as when public agents refer their decisions to internal or external audits (Hood, 2020).

In this context, discretion allows public servants to tailor existing standards to the realities they face, striving to serve the public interest while adhering to regulations. However, it also generates anxiety about potential future sanctions, as such actions may be perceived as falling outside the bounds of the law. Discretion, as an experience, inherently occupies an ambiguous organizational space, ranging from creative decision-making to inaction driven by fear of accountability.

3. METHODOLOGICAL PATH

This study seeks to deepen the understanding of what it means to be a public servant in Brazil by examining the exercise of discretion through their experiences. It focuses specifically on those in management positions, often described as part of the “engine room” of public administration (Coelho et al., 2020, p. 839). These management careers were established at the federal level as part of an effort to modernize public administration. Public servants in these roles are expected to adapt existing rules to their realities, making discretion crucial. Discretion allows these officials to select the most appropriate course of action within legal boundaries, tailored to the specific situations they encounter.

Understanding the role of mid-level bureaucrats is essential, as these actors are involved not only in policy elaboration but also in its interpretation and implementation (Cavalcante et al., 2018). As noted by Oliveira and Abrúcio (2018, p. 213), “mid-level bureaucracy sometimes behaves like high-level bureaucracy, sometimes like street-level bureaucracy, while at the same time differentiating itself from both.” Cavalcante et al. (2018) further emphasize that these mid-level actors, who operate between policymakers (high-level bureaucrats) and implementers (low-level and street-level bureaucrats), have been understudied, with significant gaps remaining in the literature. Coelho et al. (2020) highlighted the role of these employees who significantly shape the services delivered to the public despite not being frontline actors.

This research was designed to increase understanding of how discretion is perceived and experienced by public servants tasked with making (or refraining from making) discretionary decisions while navigating a landscape filled with various rules and agreements. These decisions often involve ambiguity and risk. The central research question guiding this study is: How do public servants experience discretion, and what dilemmas do they face in such situations?

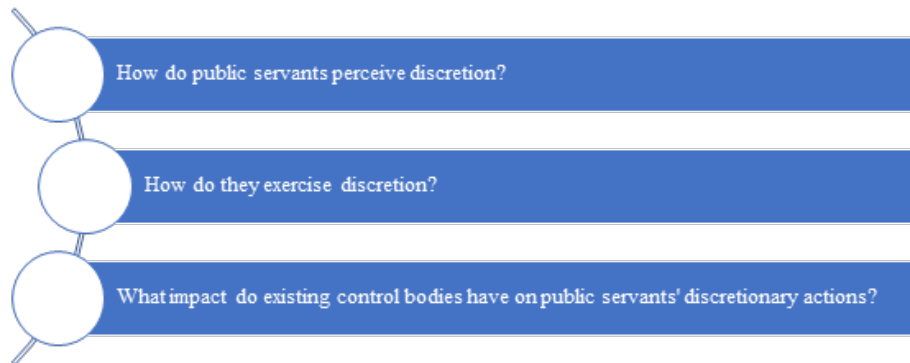
For this study, public servants from the engine room of public administration (Coelho et al., 2020) were selected, specifically those from management careers in the Brazilian states of Pernambuco and São Paulo. We selected government managers (GGOVs) who specialize in administrative functions in Pernambuco and public policy specialists (EPPs) from the state of São Paulo. These two careers were chosen based on specific criteria: the Pernambuco career because it is the author's field of expertise, and the São Paulo career because São Paulo is the Brazilian state with the highest tax revenue, as reported in the Tax Collection Bulletin on the National Council for Tax Policy (CONFAZ) website.²

To explore how GGOVs and EPPs perceive the exercise of discretion, the study employed focus group interviews, conducting five sessions between April and July 2021, as detailed in Table 1. According to Gaskell (2008, p. 65), the goal of qualitative interviews is to achieve “a fine-textured understanding of beliefs, attitudes, values and motivations in relation to the behaviours of people in particular social contexts.” Thus, focus group interviews were deemed an appropriate method for investigating the individual factors and experiences that shape discretion. This method enables the observation of the influences on and motivations behind their actions, and the outcomes of their discretionary decisions. Furthermore, focus groups facilitate interaction among participants, helping to build a comprehensive view of their experiences and attitudes toward accountability in discretionary acts. Barbour (2009) also notes that focus groups are particularly effective for exploring sensitive topics, which is relevant given that some participants expressed discomfort when discussing their experiences with discretion.

When designing the research, a key consideration was determining the ideal size of the focus groups. There is no consensus in the literature, with recommendations ranging from 6 to 15 participants (Trad, 2009). However, Barbour (2009) suggests that for social research, the number of participants should not exceed 8 and that smaller groups of 3 or 4 individuals may be more effective, depending on the research's characteristics. Given the study's aim for in-depth discussions and the necessity of conducting interviews remotely due to COVID-19, smaller groups with a maximum of 6 participants were selected to facilitate more focused and meaningful interactions.

Based on a semi-structured framework (Thiel, 2014), the interview design (Figure 1) was organized into three sections. The first section focused on introducing the participants and capturing their perceptions of discretion. The second section aimed to explore how discretion is exercised in their roles. The final section examined how the actions of control bodies influence the participants' behavior when making discretionary decisions.

² <https://www.confaz.fazenda.gov.br/>

FIGURE 1 DESIGN OF THE FOCUS GROUP'S SCRIPT

Source: Elaborated by the authors.

In the first section of the interview, public servants were asked to discuss their professional experience, their current workplace, and the activities they perform. They were also prompted to reflect on the relationship between their tasks and existing regulations to determine the role of discretion in their daily routines. This discussion included examining their perceptions of any flexibility they may have in their actions.

In the second section, building on their previous responses, the discussion focused on situations where either no specific rules existed for the demands they faced or where existing rules hindered their actions. The aim was to gather detailed examples of such experiences, capturing participants' feelings of satisfaction or discomfort when they were required to exercise discretion.

The final section of the interview addressed the occurrence of inquiries, notifications, or penalties from oversight bodies and how the possibility of these actions influenced the participants' decision-making. Interviewees were also asked to consider which scenario they preferred: operating under a well-defined standard or having greater freedom to act. This was to understand whether they viewed discretion as a positive or negative aspect of their work. Notably, the role of advisory prosecutors frequently emerged in discussions about oversight, highlighting their significant impact on the actions of public servants, despite not being part of the formal oversight process.

All recordings were fully transcribed anonymously, referencing only the interviewees' positions: GGOV for managers from the state of Pernambuco and EPP for specialists from the state of São Paulo. The participants, who had diverse academic backgrounds, had all been in their respective careers for over ten years. Table 1 shows the distribution of participants in the focus groups:

TABLE 1 DISTRIBUTION OF PARTICIPANTS IN THE FOCUS GROUPS

Focus group	Description	State	Sex	Focus group	Description	State	Sex	
GF 01 (Test)	GGOV01	PE	M	GF 04	EPP01	SP	F	
	GGOV02	PE	M		EPP02	SP	F	
	GGOV03	PE	F		EPP03	SP	F	
	GGOV04	PE	F		EPP04	SP	M	
	GF 02	GGOV05	PE	M	GF 05	EPP05	SP	M
		GGOV06	PE	F		EPP06	SP	F
GGOV07		PE	M	EPP07		SP	M	
GGOV08		PE	F	EPP08		SP	M	
GF 03	GGOV09	PE	F					
	GGOV10	PE	F					
	GGOV11	PE	F					
	GGOV12	PE	M					
	GGOV13	PE	M					
	GGOV14	PE	F					

Source: Elaborated by the authors.

Content analysis was employed to interpret the focus group data, aiming to systematically organize and categorize the information collected. The process began with pre-analysis, followed by exploring the material and treatment of the results, and concluded with data inference and interpretation (Bardin, 2011). The initial step involved selecting the focus groups for analysis and skimming the interview transcripts to identify relevant indicators. All five focus groups were deemed suitable for analysis, with no need for exclusion. Subsequently, the data were coded through the classification and aggregation of the material. A thematic analysis approach was applied to determine the recording units, while the frequency of these units in relation to their context was used for enumeration. Categorical analysis was the primary technique to further dissect and understand the data.

4. RESULTS

Discretion is examined across various disciplines in different ways (Hupe, 2013), but in practice, an individual’s experience with discretion is not segregated. Instead, it reflects a complex interplay of personal concepts and assumptions. During the interviews, each participant described their understanding of discretion based on their own life experiences and how they handled discretionary situations they encountered. From this analysis, four distinct context units emerged: fear of acting, adherence to rules, legal support, and justified action.

The “fear of acting” context unit arose from the participants’ reports of fear or hesitation when making a discretionary decision. This unit aligns with the work of Campana (2017), Guimarães (2016), and Santos et al. (2022), which discuss the culture of fear and the inefficiencies it generates. As noted by Andhika (2018), inaction is often perceived as a safer and more comfortable choice for public servants, as oversight bodies typically focus on penalizing actions deemed incorrect but often overlook instances of “non-action.”

Among the context units, “fear of acting” was the most frequently mentioned, appearing 55 times, with a significant emphasis on how control bodies reinforce a “culture of fear.” This unit encompasses both general references to fear when making discretionary decisions and specific examples of inaction – situations where no further steps were taken. Inaction frequently occurs when public servants face a situation requiring a discretionary decision but hesitate due to the fear of being blamed. Campana (2017) and Guimarães (2016) highlight that one of the issues with oversight mechanisms is their relentless pursuit of punishment, often without considering the circumstances faced by the public servant at the time of decision-making or the reasoning behind their actions. Some illustrative reports are presented below:

The public manager, public servant, or public agent, they are giving up making decisions [...] “– I don’t want to make the decision alone, I don’t feel safe making it.” So, you avoid making a decision, right? (GGOV02).

Yes, I noticed there at the [the interviewee mentioned a state agency] that things were getting stuck. When I got to a situation like that, I was very afraid to do something [...]. And basically everything stopped there, it didn’t move forward (GGOV09).

I think that reflects a bit of fear: “No, but I’m going to decide, and someone is going to say that this decision was wrong.” I think the context today is one of more fear. Yes, that’s the word (EPP04).

In my opinion, inaction is quite prevalent in the state (EPP07).

Two additional issues related to fear emerged from the focus group discussions. The first issue, linked to inaction, is the challenge of innovating in public administration, as highlighted in the work of Santos et al. (2022). The second issue concerns the “loss” of competent public servants who no longer wish to risk being penalized for decisions made in good faith.

It is difficult to innovate in public service because people become apprehensive after taking action (GGOV07).

For example, “a very serious, responsible, and competent person who was the general manager and approved the processes [...] is now facing disciplinary action. We are convinced that they acted with the utmost care, strictly adhering to all possible criteria, yet they are being questioned. And what happened? We lost a highly competent general manager. Why? Because, from what I understand, they decided it wasn’t worth the risk” (GGOV11).

The second context unit is “adherence to rules,” cited 46 times. In this context, public servants perceive some degree of discretion in their actions but prefer to adhere strictly to the law, avoiding any interpretation or action that lacks explicit legal definition. This approach emphasizes security and a desire for greater standardization, which can also be seen as a dysfunction inherent in bureaucratic structures.

In general, adherence to rules reflects three main aspects: the security of making predefined decisions and prioritizing processes over objectives (Merton, 1970); a situation where the risk of punishment is minimal, allowing public servants a safe excuse for inaction if their preferred course of action deviates from their discretion; and, in contrast to the previous aspects, a means of ensuring good procedures and their continuity. The following focus group excerpts illustrate these points:

It's certain that I am, at least, when I'm using the norm, I'm there, whether I like it or not, doing what the people want me to do (GGOV02).

You follow the rules so that if a problem eventually arises, you can say, “I did it by the book” (EPP04).

So, this is a trap, or this is a way that if you don't want to change things too much, you always use this technical argument, saying, “No, this is a technical issue that can't be changed. No, this is protected by some divine entity here that can't be changed,” or something to that effect” (EPP04).

In the third context unit, “legal support,” which was mentioned 49 times, public servants recognize their discretionary power but rely on existing guidelines to carry out their duties as they see fit. Despite their awareness of discretion, there is a persistent effort to seek legal backing, which may come from past decisions made internally or by advisory and control bodies or through direct consultation with the organization's legal department.

While public servants exercise some creativity in this context, they still adhere closely to established standards, ensuring that any discretionary decisions are based on previous rulings or have legal approval. This quest for validation extends beyond merely finding prior judgments that support a decision; it also involves seeking out “negative findings,” where previous adverse judgments by a control body deter similar actions. Even if the law permits certain actions, a “negative finding” can lead the public servant to avoid or reconsider those actions. This process is illustrated in the following statements from focus group participants:

Additionally, that's what we call negative findings, right? When we're on the front line, executing, and then certain things come up: “– Look, but we already have a negative finding here for this action.” So, we may have a law there, we may be marginalized by legality, yes, but we already have a negative finding. So, like, “– Look, you can do it, but you will be held responsible” (GGOV06).

I think that even when we try to use discretion, we try to support ourselves in some concept, in some similar case, in some previous case, you know? (GGOV14).

I understand that much of the work we do is guided by the TCE [State Court of Accounts] (EPP08).

The actions discussed in this context unit align with the findings of Hood (2020), who describes three strategies by which public agents exercise discretion while aiming to avoid blame. One of these strategies is the validation of discretion through external or semi-external validation. External validation involves consulting control and advisory bodies or verifying judgments and legal precedents, while semi-external validation occurs through internal consultations, such as seeking advice from the organization's legal department.

In the fourth context unit, “justified action,” cited 49 times, public servants are aware of their discretionary power and strive to use it to direct their actions toward what they believe is the most appropriate outcome. In this context, public servants proactively justify their decisions, anticipating potential scrutiny from control and advisory bodies. It is here that the creativity of public servants is most evident. This context unit differs from “legal support” in its focus: while “legal support” emphasizes adherence to established procedures, “justified action” is centered on achieving specific objectives. Thus, while “legal support” concentrates on the means, “justified action” prioritizes the end goals.

Only within this context unit do public servants attempt to forge new paths. Although fear of being blamed is still present, employees seek to justify their actions and document the reasons behind their decisions, anticipating possible oversight. This approach aligns with the economic perspective of discretion, which allows employees to act creatively to meet organizational demands (Evans & Hupe, 2020). Here, employees actively seek to develop strategies to achieve their objectives. The term “legal engineering,” which emerged in one of the focus groups, aptly describes how employees creatively navigate the rules to justify their actions. This concept is illustrated in the following participant statements:

Have you ever seen legal engineering? It's that thing that no one ever thinks will happen, but it does. And it happens, we do some legal engineering, we take a rule and do some legal engineering and build the opinion based on that legal principle that is, yes, it is, it is guaranteed in the rule (GGOV02).

We try to use the rules to get our work done, or what we think is correct, that, ah, the public interest, anyway, we try to use the rule (EPP05).

I've already used the loophole in the rule in a way that [...] seemed to me to be the best human way (EPP08).

As previously mentioned, reasoning plays a crucial role in supporting the actions of public servants as they strive to achieve what they perceive as the best outcome for the state, the most ethically correct decision, or the best choice for the well-being of individuals. It is equally important that this reasoning is thoroughly documented. Proper documentation facilitates future reference in case of any inquiries about the decision-making process and allows the public servant to recall the specific factors that influenced their decision.

But there is always a way for us to justify our decisions, [...]. If it is a legitimate decision, there are ways to find a basis (GGOV13).

This is also for you to revisit what made you decide. If a question comes up like this: “– Why did you decide that?” If you didn’t record it. That’s why it’s important for you; for everything you do, you must justify and record it (GGOV12).

Always try to think of having a backup, because, you know, in case someone looks for something, you know, it’s all recorded, I have a way to prove it, anyway (EPP06).

Additionally, knowledge about the subject matter and confidence in decision-making were highlighted by interviewees as significant factors when engaging in “justified action.”

I have these principles, but, but I, I have to feel comfortable with the decision I’m making (GGOV12).

You have to make the decision as confidently as possible. No, I, I, this is it; if someone asks me, I’ll say this (GGOV13).

From this perspective, “justified action” arises primarily from two factors: the desire to achieve what is perceived as the optimal outcome and possessing the necessary knowledge to do so. With these two elements, public servants are better equipped to find justifications for their actions. Although bureaucrats are not immune to the fear of accountability, they attempt to preemptively address potential challenges by thoroughly justifying and documenting their decisions.

Another prominent theme in the focus groups was the collaborative approach to handling discretionary situations. Bureaucrats often mentioned working together to develop joint responses, whether with colleagues from the same department or by collaborating with public servants from different areas. These discussions and collective decision-making were particularly important when facing sensitive or complex situations. This approach aligns with one of the blame-avoiding strategies outlined by Hood (2020): pooling discretion to share responsibility. By building a consensus, employees not only create a shared understanding but also distribute the responsibility for decisions.

So I think this exchange is very rich and exists a lot within the SAD [state agency] [...], of seeking what, the best solution, talking, exchanging experiences with other areas (GGOV03).

I listen to my colleagues a lot, because sometimes they help you see, things that you didn’t realize before. So we get together on controversial issues, and it happens that I am outvoted, and I go with the majority because I see that it is the best thing to do (GGOV05).

Another category of analysis identified from the results refers to the feelings associated with discretionary actions, which were grouped into two context units. On one hand, discretion was seen as leading to satisfactory outcomes in 18 instances; on the other, it was linked to feelings of discomfort in 83 instances. Some perceptions include:

In reality, we wouldn’t even need it, right. Nowadays, a robot would be put there and it would be done, right? Someone has already defined it, right? So, I think it’s good, I think it’s good, I think it’s important, considering our laws (GGOV12).

We can do it so that the government works, ultimately, right? (EPP04).

So, yes, the public agent lives on this tightrope: “– I do the right thing, I do everything legally, but I can be held responsible for some understanding” (GGOV05).

Look, I’m not going to sign this agreement; I’m not going to be the manager of this agreement because in X years, the TCE [State Court of Accounts] is going to come down on me (EPP02).

In relation to interactions with oversight bodies, another category of analysis emerged, which includes two context units. The first context unit pertains to situations where the actions were viewed positively, highlighting efforts to build a shared understanding aimed at improving processes, with 17 citations noted. Some examples include:

We have the opportunity to raise, you know, these questions, these disagreements. [...] When you have access to a Court of Auditors, you can explain your point of view, or to the PGE, it is very interesting when you have, like, this, this possibility (GGOV11).

They really did an analysis of the processes to understand if there was any process within what I performed, you know, in the program, that could be improved, enhanced or that generated some risk to the delivery of the program, to the development of the program. So that was an exception (EPP06).

The second context unit highlights negative experiences, which were prevalent in the interviews, appearing in 83 instances. Two primary motivators for these negative experiences were identified: a perceived detachment of control and advisory bodies from the realities faced by those on the ground, and a focus on identifying problems rather than understanding the specific circumstances experienced.

The guys live in a bubble [...] they don’t understand who is on the front line, [they do not understand] what the guy has to deal with in order for the school to work properly, [...] for the hospital to be able to receive patients, victims of, of, whatever... Then they come afterward and say, “– Oh, this is wrong; you should have done it differently; Why did you do it this way?” [and the person replies] “– Yes, you saw, at that moment, that day I was there, when the building was collapsing, and I had to make a decision right away; I couldn’t wait for the director’s signature to authorize the payment process, so I could... [do what I had to do]” (GGOVgf07).

But I think it’s because they work [...] based on a perfect scenario (GGOVgf08).

We’re becoming more fearful. That’s what I think is the context of harmful judicialization (EPPgf04).

There’s no such relationship, like, they’re very distant from the public servants and the executive [branch]. [...] Sometimes I wish the Court was more present because it would help to inhibit some, some attitudes, like that. They would be more like that (EPPgf06).

5. DISCUSSION

Discretion is an intrinsic aspect of public administration, as laws and regulations cannot foresee every possible scenario (França, 2012). Consequently, public managers often have a degree of flexibility in their decision-making, aiming for the “optimal management of public affairs” (França, 2012). However, this freedom is constrained by existing regulations, positioning discretionary decisions as an area of inherent ambiguity. The exercise of discretion is frequently influenced by a pervasive culture of fear and punitiveness, which imposes a framework of blame on public servants (Campana, 2017; Guimarães, 2016; Pires, 2009; Santos et al., 2022).

The study identified various modes of action among bureaucrats, closely tied to their confidence in exercising discretion. Those who employ creativity tend to justify and document the rationale behind their decisions, anticipating potential scrutiny from control bodies. By preemptively addressing possible questions, these bureaucrats aim to mitigate future challenges to their decisions.

On the one hand, inaction or decisions that diverge from what bureaucrats deem most appropriate were also observed. The pervasive threat of punishment often overshadowed the desire to act, leading to what has been described by Brazilian scholars, in Portuguese, as “*apagão das canetas*” or pen blackout (Mendonça & Carvalho, 2022; Mundim, 2020) and a resultant decline in efficiency (Campana, 2017; Guimarães, 2016).

Despite this fear, there is a recognition of the necessity and inevitability of discretion, creating a constant trade-off between exercising discretion and managing the risk of being blamed. To navigate this balance, bureaucrats often adopt blame-avoiding strategies, as discussed by Hood (2020).

FIGURE 2 TRADE-OFF BETWEEN DISCRETION AND BLAME



Source: Elaborated by the authors based on Hood (2020).

Throughout this study, two key arrangements for managing discretion were identified. The first arrangement involves pursuing shared responsibility through group decision-making (Hood, 2020). The data indicated that, in practice, this sharing of responsibility occurs when public servants consult with colleagues, team members, other departments, or superiors for complex decisions. This

collaborative approach helps them build consensus and determine the most appropriate course of action.

The second arrangement involves external and semi-external validations, such as consultations with advisory bodies or legal departments within the agency. Many of the decisions reported by the interviewees were based on these consultations, whether direct or through precedent decisions. This reliance on “legal support” shows the importance of discretion in the decision-making process.

Interviewees highlighted that while discretion can enhance public management, it is also accompanied by a pervasive fear in the public sector. Bureaucrats adapt their actions based on this fear; some adhere strictly to norms to avoid blame, while others embrace a more innovative, albeit risky, interpretation of these norms. The risk is inherent to the agent’s position, and they must choose to act with discretion or not. Discretion, while inherently ambiguous, is experienced in a dual manner. On one hand, it provides an opportunity for creativity and flexibility in addressing complex issues. On the other hand, it introduces risks related to the responsibility that can inhibit performance. As such, discretion is often viewed as an organizational space fraught with discomfort and avoidance, rather than as a straightforward opportunity for innovation.

6. CONCLUSION

This study aimed to analyze discretion from the perspective of public agents when faced with situations requiring discretionary decisions. In management careers, discretion is inherently present, as these roles were created to foster a qualified public service capable of making informed decisions. Consequently, the exercise of discretion, involving a more creative approach and the pursuit of optimal public management, is a fundamental aspect of these positions.

The data collected revealed a central dilemma: the trade-off between blame-avoidance and exercising discretion. This dilemma manifests in various forms of action, which range from inaction to more innovative approaches aimed at achieving public goals. The choices of bureaucrats are closely tied to their confidence in their actions; decisions leaning toward inaction are often driven by fear of being blamed, while more creative actions are typically characterized by thorough justification and documentation of the decision-making process.

This study contributes to a deeper understanding of what it means to be a public servant by exploring the dilemmas faced and choices made from the agents’ own perspectives. By examining how these dilemmas influence individuals and the strategies employed for discretionary action, the research opens up a new agenda focused on individual-level factors, such as motivation, job satisfaction, and work-related stress. It also provides an institutional perspective, offering insights into how these individual experiences shape public policies.

However, this research presents limitations. One key challenge is the difficulty in making broad generalizations due to the complexity of the Brazilian public administration, which makes it difficult to fully characterize and generalize findings. Additionally, the scope of the literature was necessarily narrowed, as methodological choices were made during the research process. This means that certain themes, such as the decision-making process, creativity, and bureaucratic insulation, could be further explored based on different data interpretations. Furthermore, the study’s focus on a specific group – public servants from the executive branch in management careers – limits the generalizability of the results to other sectors or types of public service careers.

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Milton Morassi do Prado: Conceptualization (Supporting); Validation (Supporting); Writing - original draft (Supporting); Writing - review & editing (Supporting).

DATA AVAILABILITY

The dataset supporting the results of this study is not publicly available.

ACKNOWLEDGMENTS

Carolina Soares dos Santos would like to thank the Government of the State of Pernambuco for enabling her full-time dedication to completing her master's degree.