

Conceptualizing Justice at the Street-Level: Examining the Role of State-Level Magistrates in Procedural Justice

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The Concept of Procedural Justice

When attempting to conceptualize justice, researchers, academics, practitioners, and the public appear to be primarily sensitive to the plight of the customer with regard to interactions with the criminal justice system. The customer, as Galanter (1974) evinces, can often be defined as one-shotters (OS) and repeat players (RP). Essentially, OSs equate to one-time or infrequent plaintiffs or defendants in the civil or criminal justice system. Whereas RPs are those individuals or organizations that are routinely engaged with these systems either through their own instigation, or by the instigation of others. In both regards, I would argue, the bulk of awareness given to conceptualizing justice is framed through the eyes of OSs and RPs. As such, a natural outgrowth of this type of observation would be how, and in what ways, do OSs and RPs perceive their experiences with the civil and criminal justice systems. As Thibault and Walker (1975), and Leventhal (1980) identify, conceptualizing justice must be viewed through the prism of procedural justice. Moreover, they make clear that understanding procedural justice is complex, and is comprised of numerous different, yet often interrelated variables. Leventhal identifies these variables as: consistency, fairness, suppression of bias, correctability, ethicality, representation, and accuracy. When considered in aggregate, Leventhal's variables fit well into Thibault and Walker's broader concept of decision control and process control; whereby decision control represents a person's ability to refute or prove their case, and process control equates to

the ability of the party to play a role in the ultimate adjudication of their case. Though these variables offer a seemingly straight-forward way to understand procedural justice by definition, Tyler (1988) found this not to be the case. Rather, Tyler found a complex interrelationship amongst the variables in his research attempting to understand procedural justice. Specifically, Tyler found that the process matters, and, more importantly, that the perception of fairness in the process mattered the most. Tyler further discovered that a significant contributor in whether or not a person felt their encounter with the formal justice system was fair, was skewed by the person's previous experiences with the justice system at all levels. Noteworthy amongst Tyler's findings was the role consistency did *not* play in citizen's overall conception of procedural fairness. More often than not, the individuals in Tyler's study espoused the variables that encapsulate the *process* of procedural justice (as outlined by Leventhal, 1980), versus the outcomes of the process when determining if they felt the process was fair. These findings make it clear then that for the formal justice system to be perceived as fair and its outcomes legitimate, the individual parts of the system must work hard at all levels to ensure adherence to the principles of fairness.

The Role of State-Level Magistrates in Procedural Justice

For most citizens, their first experience with the American judicial system comes in the form of a post-police encounter with a state magistrate or equivalent dependent upon the state's judicial makeup (Albanese, 2004). As a result, public confidence in the fairness and impartiality of the judicial officer making decisions in his or her case are of particular importance. In their *1999 National Survey of How the Public Views The State Courts*, the National Center For State Courts found that 50% of their respondents felt that state criminal courts were handling their cases fair to poorly. Additionally, 33% of African-Americans and 26% of Hispanics felt that

state court judges were not honest and fair in deciding cases, while an additional 50% of African-Americans and 46% of Hispanics only “somewhat agreed” that judges are fair and honest in their decisions. Though the Survey did not specifically address magistrates, taken inferentially, an observer can see the necessity of the public’s confidence in its judicial system, particularly at the street-level where most interactions occur. While we can easily understand the discussion related to the public’s perceptions and confidence in their state magistrate systems, it is of equal importance to examine the context in which the magistrates perceive themselves. To perform such introspection, I submit that it is necessary to analyze magistrates through the contextual lens of professionalization.

Professionalization, as Wilensky (1964) posits, has become a type of rallying call for all occupations that feel that they are not receiving the proper internal and external respect that they deserve. However, just what occupations deserve to be called “professional” and how does one go about identifying them (Freidson, 1973; Wilensky, 1964)? As Wilensky (1964) and Evetts (2003) note, being considered part of a professional occupational series is highly sought by many different types of workers for the perceived status and reward that these type of positions traditionally imply, e.g., doctors, lawyers, accountants. Moreover, Wilensky (1964) relates that there are both highly professionalized occupations and less professionalized occupations. As such, both higher and lesser occupations share attributes that are common for a designation of being identified as a professional. Wilensky specifically identifies a two-step process that exists for occupations to obtain the designation of being “professional.” Wilensky posits that the occupation must go through a structural process that entails: (1) the formation of a social need for a specialized occupation; (2) the formulation of specific training needs and standards that must be obtained and maintained; (3) creation of occupation specific organizations and

associations; and (4) the establishment of codes of conduct and rules for ethical behavior.

Secondly, Wilensky identifies attitudinal (individual) attributes as well. These attributes encompass how the worker utilizes status in professional organizations for peer acceptance, commitment to the sociological need of the occupation, self-regulation, personal fulfillment, and autonomy in decision-making. When considering magistrates, autonomy stands out as the particular attribute of professionalism through which state magistrates must stake their claims for increased professionalization. An examination of state-level magistrates helps to make this point.

On the one hand, state-level magistrates, in their roles as secondary, yet arguably primary gatekeepers to the criminal justice system, directly deliver services to the public on behalf of the government. Since most state-level magistrates apply constitutional principles when interpreting state laws at the local level, it can hardly be argued then that state-level magistrates are not representatives of state governments, delivering services directly to the citizenry within the concept of a Street Level Bureaucrat (SLB) (Lipsky, 1980). Moreover, Weber (1946) relates that bureaucracies maintain the central characteristics of rules, training, accountability and measurement. Taken individually, magistrates apply in each category. They exist within a body of rules; they have been indoctrinated into the prevailing bureaucracy; they are performing an official activity; and they are allegedly accountable. Additionally, state-level magistrates operate as a semi-autonomous branch of the judiciary in that they are often the sole adjudicator of fact in the preliminary phases of a legal case. They typically weigh evidence, evaluate witnesses, and make legal decisions (many of a constitutional nature) without the aid of a prosecutor or defense counsel. As such, autonomy, with regard to state-level magistrates, could be considered to be greater than higher level courts. It is not surprising then to understand how these conditions lend

credence to an argument for increasing state-level magistrate professionalism through increased training and certification.

As Evetts (2003) evinces, professionalizing an occupation can be seen as a way to bring about social change in the public interest. The professionalization of state level magistrates I argue is such a cause for change. Unfortunately, numerous states, magistrates are often ill trained for the complexities of their job. This potential lack of training, when coupled with the lowered status magistrates receive as a result of their relative positioning on the hierarchical ladder of the judiciary, could have the two-fold effect of reducing public confidence in state magistrates, and weaken the perception of the magistracy as a legitimate legal institution. Factors that could, in the minds of persons exposed to state-level magistrates, raise questions of fairness. In *United States v. Dunning* (1969), the U.S. Supreme Court recognized the seriousness of magistrate education at the federal level noting:

The interposition of an independent judicial officer whose decision, not that of the police, [will] govern whether liberty or privacy is to be invaded...goes a long way toward accomplishing the objectives of the Fourth Amendment. True, the objectives are not accomplished if the judicial officer is put upon by the police, but it is the responsibility of such officers, particularly in light of their new dignity as United States magistrates and the requirements for their membership in the bar and periodic training...to see to it that they are not deceived. Given that fairness is the primary attribute through which people contextualize procedural justice, a study that measures magistrate training, performance, professionalism, and legitimacy, seems definitively needed, and long overdue

