Political Science
Legal Studies 217
Street Level Legal Actors

Street Level Legal Actors

- Enforcement agents
  - Asylum officers
  - Environment
  - Workplace safety
  - Building & fire codes
- Front-line benefits administrators
  - Social security disability
  - Unemployment compensation
  - Welfare benefits
- Police

“Police Powers”

- Governments have the traditional powers of a sovereign to provide for the health, safety, and welfare of the people
- Police powers exercised through street level actors
- Street level actors apply law to serve the mandated goals
Discretion

- Discretion is central to front-line decision makers
  - Must *constantly* make choices
- Discretion often must be exercised relatively quickly
  - Productivity expectations
  - Fast moving situations
  - Canalized discretion
- Discretion is controlled through bureaucratic structures
  - Ability to supervise and review varies

Street Level Actors Face Central Dilemmas

- Police
  - How to achieve just ends through coercive means?
  - How to defend against recurring threats while treating people with courtesy and respect?
- Enforcement agents
  - How to achieve primary policy goal without generating excessive costs?
- Benefits administrators
  - How to get benefits to those who are entitled to them while stopping the cheats?

Enforcement Agents

- Primarily encountered by business
  - EPA
  - OSHA
- Homeowners: Building inspectors
  - Safe buildings
  - Protecting owners investment
  - Efficient buildings
  - Accessible buildings
Building Code Inspectors

- By the book or flexibility
- Officiousness in code enforcement
- Rooting out problems vs. finding solutions
  - Solving problems while controlling costs vs. costs be damned
- Importance of reputations of subjects of enforcement activities
  - Temptations facing builders

Benefits Administration

- Universal vs. situational benefits
  - Child Allowance vs. Aid to Families with Dependent Children
  - Disability benefits vs. negative income tax
- Administering situational benefits
  - Assessing eligibility
  - Preventing cheating and fraud

Unemployment Compensation

- Assessing initial eligibility
  - Work credits
  - Reason for unemployment
    - Layoff or dismissal for reasons other than misconduct
    - Dismissal for misconduct
    - Quit
- Maintaining eligibility
  - Must be available for work
  - Work search requirement
Social Security Disability

- What constitutes disability that is sufficient to prevent employment?
  - “Objective” criteria (e.g., quadriplegic)
  - “Subjective” criteria (e.g., “pain”)
- Process
  - Apply for SSD at Social Security field office
  - Referred to a state’s disability determination service

Determining Disability

- Obtain medical information from treating doctors
  - Consultative examination if evidence insufficient
- Two person “adjudicative team” makes determination
  - Medical or psychological consultant
  - Disability examiner
- Unsuccessful applicant can ask for a redetermination by a second team

Issues

- Does the claimed disability meet the requirements of the “listing”?
  - If so, it does not matter whether the claimant actually is employable.
- If not, can the claimant still be deemed disabled based on other factors?
  - Is there gainful work the claimant could do despite the medical condition?
- Is the claimed disability genuine?
- Is rehabilitation an option?
Social Security Retirement

- Even “universal” programs can require decision making
- Has the applicant met the work eligibility requirement?
- Has the person really retired?
- Initial determination at the field office
- Complex questions referred to “adjudicator” at a regional office

Importance of Appealability

- Lack of finality eases exercise of discretion
  - If you are wrong ....
- Discretionary vs. automatic appeal
  - Asylum system
- A central feature of the work of street level legal actors is reviewability, at least in theory

Police

- Archetypical street level legal actor
- Dilemmas
  - How to achieve just ends through coercive means?
  - How to defend against recurring threats while treating people with courtesy and respect?
- Operate within an organizational culture
Organizational Cultures

- James Wilson, *Varieties of Police Behavior*
- Maintaining community peace
  - “Watchman”
- Law enforcement
  - “Professional”
- Serving the community
  - “Service”

Working World of the Police Officer

- Constant exercise of discretion
  - Risk of improper exercise of discretion
- Social isolation
  - Solidarity among police officers
- Unreviewability of much action on the street
  - Low visibility of much police work
- Ever present threat of violence
  - “Symbolic assailant”

Coercion and Threat

- The Extortionate Transaction
- The Paradoxes of Coercive Power
  - The paradox of dispossession
  - The paradox of detachment
  - The paradox of face
  - The paradox of irrationality
- Paradoxes work bidirectionally
  - Complicates work of officers
  - Can be used by officers
Resolving Central Dilemmas

- Morality of Coercion: How to achieving just ends through coercive means.
  - Conflicted perspective
  - Integrated perspective
- Defending against recurring threats while treating people with courtesy and respect
  - Tragic perspective
  - Cynical perspective

Ideal Types

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<th>Perspective</th>
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<td>Professional</td>
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<tr>
<td>Cynical Perspective</td>
<td>Enforcer</td>
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Exercising Discretion

- How the two central dilemmas are resolved reflects how police exercise discretion, particularly in response to the paradoxes of coercion
- Paradox of dispossession
  - Professional: develop the beat
  - Reciprocator: delegate to enforcers
  - Enforcer: behave brutally
  - Avoider: take a hike
- Similar variations for other paradoxes
Defensive Reactions to Paradoxes of Coercion

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<td>Avoider</td>
<td>Take a hike</td>
<td>Defining out</td>
<td>phone tough</td>
<td>irrational</td>
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</table>

Source: W.K. Muir, Police: Streetcorner Politicians

Limiting Discretion

- Domestic violence
  - Danger to responding officers
  - Low arrest rates
  - Problems in prosecution
- Mandatory arrest as a solution
  - Does it reduce recidivism?
  - What types of perverse effects does it have?
    - Arresting the “wrong” person
    - Decreasing the likelihood of calling police

Policing Police Discretion

- Departmental rule making
  - Use of deadly force
- Supreme court rule making
  - Exclusionary rule
  - The problem of consent
    - Consensual vs. nonconsensual search
  - Miranda warning
  - Right to counsel
    - Literalism in demand for counsel
- Empty formalism vs. effective formalism
“The Law Is All Over”

- Law pervades American society, and democratic societies more generally
- A wide range of actors function as legal actors at the “street level”
  - Public employees
  - Private employees such as human resources officials
- Central to their work is the exercise of discretion