ADMINISTRATIVE JUSTICE AND SOCIAL SECURITY
LECTURE 1
MODELS OF DECISION MAKING

I want to introduce this unit by outlining three models of decision making, each of which exerts a considerable inference on the administration of welfare services and, in particular, on the administration of social security. These three models correspond to the ideal of the organisation as a *bureaucracy*, as a *profession* and as a *legal system*.

Bureaucratic Organisations

Max Weber (1864–1920) (a German who was one of the founding fathers of modern sociology) argued that bureaucracies can be characterised in terms of the following set of features:

1. specialisation of function and a division of labour – official tasks are divided into functionally distinct spheres and allocated to different officials,
2. hierarchical accountability – offices are arranged hierarchically and officials are accountable to their superiors;
3. rules and regulations – the performance of official tasks is carried out in accordance with a set of official rules and regulations;
4. impersonal performance of duties – duties are to be performed impersonally;
5. selection on the basis of qualifications – staff are selected through open competition;
6. graded salary structure – staff are paid salaries graded in relation to the position of the office in the hierarchy;
7. promotion and career structure – there is a career structure and staff are promoted on the basis of either seniority or merit;
8. accountability limited to performance of official duties – staff are only subject to control in respect of the performance of their official duties.

Weber's account of the salient features of bureaucracy is an example of what he called an *ideal-type* – it is made up of the essential features of a phenomenon and as such Weber argued that the best way to get at it was through a process of abstraction (or thinking) about the phenomenon in question. Although it would be rare to find an example of the phenomenon which possessed all the characteristics of the ideal type, that did not matter because the ideal type constituted a model in terms of which the phenomenon could be understood. Thus, it would be rare to find an example of a bureaucratic organisation which possessed all the characteristics of the ideal type, it is clear that many organisations with which we are familiar possess many of the characteristics of the ideal type as outlined by Weber.

According to Weber, bureaucracy represents the most efficient means of promoting what he called *legal-rational authority*. This term calls for some explanation. Weber held that authority was a special case of *power*. A person (or institution) may be said to exercise power if, in the context of a particular relationship with another person (or institution), that person's (or that institution's) preferences will prevail despite resistance. In contrast, a person (or institution) may be said to have *authority* if that person's (or that institution's) exercise of power is accepted as *legitimate*. Such a situation will be encountered wherever those who are subject to the exercise of power obey because they think it is right to do so even when they are unhappy about what they are being asked to do. Weber went on to identify three forms of authority as follows ([see handout]:

1. *charismatic authority* – here obedience to authority is justified because the person giving the order is believed to possess some sacred or otherwise special characteristics:

2. *traditional authority* – here obedience to authority is justified out of respect for old-established patterns of deference;

3. *legal rational authority* – here obedience to authority is justified on the grounds that the person giving the orders is acting in accordance with his duties as laid down in some duly established code or in rules and regulations.

Weber believed that the importance of legal-rational authority had increased and would go on increasing as society became more rational. Moreover, he believed that bureaucracy was the form of organisation which best facilitated the achievement of legal-rational authority. It too was rational – it was neutral (impartial), accountable and efficient – and its importance was bound to increase.

Even Weber's critics (and there are many) have to admit that the importance of bureaucracy has increased considerably. However, they question Weber's association of bureaucracy with, on the one hand, rationality and, on the other, with efficiency, they argue that specialisation of function and the division of labour are often inappropriate and stifle initiative. Rules, which are introduced as a means to an end, may become ends in themselves. An emphasis on the impersonal application of rules may prevent officials from taking responsibility for their actions and for ensuring that these contribute to the achievement of organisational goals. Thus, instead of representing the most efficient means of achieving organisational purposes, the term bureaucracy is often used to describe a virulent form of organisational pathology, characterised in terms of rigidity, inflexibility and "red-tape" which effectively impedes the realisation of organisational objectives.

Professional Organisations

So much for bureaucracy – we now ask how a *profession* should be defined. Although Weber did not write about professions, we can adopt his approach in developing an ideal-type model of the organisation as a profession. This starts out from the position that a *profession is an occupation which has gained control over the determination of its own work* and then goes on to specify those areas in which it has done so.

1. they control the determination of key aspects of their own work – it follows that professions are independent of the state;

2. they control their recruitment and training – professions control entry and determine what practitioners learn;

3. they control the licensing of practitioners – professions confer licenses to practice by assessing the applicant's knowledge and competence;

4. they sanction errant behaviour – this includes all behaviour 'likely to bring the profession into disrepute;

5. their practice involves the application of knowledge and the use of skills;

6. accountability is interpersonal – to other professionals and to the profession as a whole – and status reflects reputation not position;

7. there are generalist as well as specialist practitioners – the latter usually have higher status;

8. practice is guided by the 'service labour – professions seek to promote the well-being of their clients.

Just a people disagree about the advantages and disadvantages of bureaucracy as a model of organisation so they also disagree about the advantages and disadvantages of the professional model. To some, the professionals are an important moral force in society. This, according to Emile Durkheim (1858–1917), a Frenchman who was another of the founding fathers of modern sociology, the professions are as moral communities and, as such, they are an important means of challenging and responding to the breakdown of the normative order of society. According to Durkheim, their commitment to service can be seen to represent a disinterested non-partisan concern to promote the public good. The professional's calling is seen (in Weber's terms) as a vocation and granted an appropriate level of status and esteem. But to

others, on both the right and the left of the political spectrum, the professions are regarded as little more than a conspiracy against the public. To the *laissez-faire* of economists of the *new right*, the professions are monopoly suppliers of services whose very existence interferes with the free play of market forces. To the radical critics of the left the professions are more concerned with the enhancement of their own powers and privileges than with service to the public. Moreover, in the case of welfare professionals, these critics argue that they are not simply in the business of meeting needs in an altruistic manner but are more concerned with the exercise of social control.

The Legal System

The third model of organisation I want to talk about is the *legal system*. This can be seen to involve a set of procedures for resolving disputes between two or more parties through elucidating their rights and duties and deciding whose claim is the stronger. These procedures often (but not always) involve courts and tribunals.

Since the idea of *rights* is central to the concept of legality (associated with the model of the legal system), I think I should say something more about it. By a right I mean quite simply, *an enforceable claim*. Rights can be of many kinds but the rights we are primarily interested in are legal rights or *legally enforceable claims*. They are frequently contrasted with *duties* and obligations on the one hand and with *discretion* on the other. These relationships are quite complex and it is important to have a clear understanding of them.

Rights imply duties but that the corollary is not true i.e. duties do not imply rights (at least in the same strong sense. The following examples should make this clear. If someone has a right to a social insurance benefit, it follows that an the social insurance system must be under a duty to provide it. But where a social assistance organisation is merely under a duty to distribute grants to the poor, it does not follow that anyone in particular has a right to help.

The relationship between rights and discretion is more symmetrical. We say that an individual (or organisation) has *discretion* if he or she or it is free to choose between several competing courses of action. To the extent that clients have rights, it follows that organisations and their staff cannot have discretion and vice versa, to the extent that they do have discretion, clients cannot have rights. A final point is that rights may be either *procedural* or *substantive*. In the first case they refer to the ways in which individuals (clients) are treated, in the second case, they refer to outcome i.e. to what they are actually entitled to.

The legal system can also be presented as an ideal type with the following set of defining features:

1. it is concerned with dispute resolution – i.e. with resolving disputes between two (or more) parties;
2. it is independent of all the parties concerned;
3. adjudication must be impartial – adjudicators should not make decisions until both sides have put their case;
4. adjudication consists of balancing the rights and duties of the parties to the dispute;
5. adjudication consists of applying recognised rules, standards and principles to the facts of the case;
6. the standards are built up from previous cases – in this sense, the legal system is reactive rather than proactive;
7. reasons must be given for decisions;
8. decisions can be appealed to higher level adjudicators.

Just as bureaucracy and professionalism are variously seen as good and bad, beneficial and harmful, appropriate and inappropriate, welfare promoting and welfare limiting, so too with legality. Legality may be seen as a positive force for good, ensuring that individual rights are respected and that limits are

placed on the action (or inaction) of those who would otherwise interfere with them or prevent their realisation. Alternatively, it may be seen as a backward-looking force, which results in much unnecessary litigation and prevents public programmes from achieving socially approved goals. However, our task is not to come down on one side or the other, any more than we did in the case of bureaucracy or professionalism. It is rather to point out that there are arguments in favour and arguments against each of the three models I have outlined.

Actual organisations and, in particular, organisations responsible for the administration of social security, tend to have some characteristics of each of the three models I have outlined. By providing an ideal of what an organisation could look like, the three models enable us better to understand how these organisations actually work. Groups which act as the bearers of these models (bureaucracy – officials and civil servants, professionalism – doctors, social workers and rehabilitation counsellors, legality – lawyers and welfare rights workers) exert competing pulls (demands) on organisations and shape their administrative characteristics.

Demands of Bureaucracy		**Demands of Professionalism**
1. accountability to superiors, administrative review		1. accountability to peers, second opinions
2. decisions based on application of rules and regulations		2. decisions based on application of knowledge
3. emphasis on accuracy and efficiency		3. emphasis on enhancing the client's welfare
	Demands of Legality	
	1. accountability to independent adjudicator, appeals to courts and tribunals	
	2. decisions based of judicial interpretation of law	
	3. emphasis on rights of parties and 'due process'.	

Questions for discussion

1. How useful are these three models (or ideal types) for understanding the administration of social security?
2. Is the market is another ideal type? What are its defining characteristics?
3. What have been the effects of the market on the administration of social security?
4. Can you think of any other ideal types which would further enhance our understanding?

ADMINISTRATIVE JUSTICE AND SOCIAL SECURITY

LECTURE 2

THE CONCEPT OF ADMINISTRATIVE JUSTICE

The subject of administrative justice will be approached by referring to Jerry Mashaw's book *Bureaucratic Justice* – Chapter 2 appears in the Reader for this unit. At one level this book is just an interesting case study of the American Disability Insurance (DI) scheme; at another level it exemplifies an approach to the subject of administrative justice i.e. to the justice inherent in the administration of the DI scheme which is of wide general application.

Mashaw starts by looking at criticisms of the DI scheme. Like many social security schemes it was not particularly popular and was criticised for all kinds of shortcomings. However, Mashaw argued that there were, in effect, three broad categories of criticism.

1. the scheme was criticised for failing to provide adequate management controls and for producing inconsistent decisions (criticism 1);
2. the scheme was criticised for failing to provide a good service and for failing to rehabilitate its disabled clientele (criticism 2);
3. the scheme was criticised for failing to ensure 'due process' and for failing to respect and uphold the rights of its disabled clientele (criticism 3).

Mashaw argued that these criticisms reflected different *normative conceptions* of the DI scheme i.e. different views of what the scheme could and should be like. Thus, they corresponded to the three normative models or ideal types of organisation we looked at in the first lecture.

1. criticism 1 corresponds to the model of organisation as a bureaucracy (Mashaw calls this *bureaucratic rationality*).
2. criticism 2 corresponds to the model of organisation as a profession (Mashaw calls this *professional treatment*).
3. criticism 3 corresponds to the model of organisation as a legal system (Mashaw calls this *moral judgement*).

On p.24, Mashaw defines *administrative justice* (the justice inherent in routine day-to-day administration) in terms of 'those qualities of a decision process that provide arguments for the acceptability of its decisions.' Since, in the case of the three ideal types of organisation we referred to yesterday, one appeals to different characteristic of the organisation to assess the acceptability of administrative decisions, it follows that each of the three ideal types is associated with a different conception of administrative justice. Thus, there is one conception of administrative justice based on bureaucratic rationality, another based on professional treatment and a third based on moral judgement. According to Mashaw, each of these models is associated with a different set of *legitimating values*, different *primary goals*, a different *organisational structure* and different *cognitive techniques* (p.31).

Features of the Three Justice Models

Dimension/ Model	Legitimating Values	Primary Goal	Structure or Organisation	Cognitive Technique
Bureaucratic Rationality	Accuracy and Efficiency	Program Implementation	Hierarchical	Information Processing
Professional Treatment	Service	Client Satisfaction	Interpersonal	Clinical Application of Knowledge
Moral Judgement	Fairness	Conflict Resolution	Independent	Contextual Interpretation

In the lectures I give in Edinburgh, I have characterised the three models slightly differently and you may find my model somewhat more accessible since the terms I use are those which I have been using in these lectures.

Model	Mode of Decision Making	Legitimating Goal	Nature of Accountability	Characteristic Remedy
Bureaucracy	Applying rules	Accuracy	Hierarchical	Administrative review
Profession	Applying knowledge	Service	Interpersonal	Complaint to a professional body
Legal system	Weighing-up arguments	Fairness	Independent	Appeal to court or tribunal

Mashaw contends that each of the three ideal types is *coherent, plausible and attractive*. He also argues that they are *competitive* rather than *mutually exclusive*. [The competitive principle states that 'if you have more of one, you must have less of the other(s)' while the mutually exclusive principle states that 'if you have one, you cannot have the other(s)]. Thus, the three ideal types can and do coexist with each other. However, other things being equal, the more there is of one, the less there will be of the other two. His insight enables us to see:

1. what trade-offs are made between the three models in particular cases;
2. what different sets of trade-offs might be more desirable.

The trade-offs which are made reflect the concerns of legislators (who may choose to emphasise one or other of the models and the principles they embody) and the bargaining strengths of the institutional actors who have an interest in promoting the three ideal types – civil servants and officials in the case of bureaucracy; doctors, social workers, rehabilitation counsellors and other professional groups in the case of professionalism; lawyers and welfare rights workers in the case of legality. The trade-offs will vary from one country to another, from one service to another and within a given service, from one programme to another. By and large, bureaucratic concerns tend to be dominant in social security; professional concerns are particularly important in relation to social assistance, provisions for the chronically sick and disabled and schemes in which rehabilitation is important; while legal concerns are of varying importance in different countries.

Each of the models emphasises different goals:

1. in the case of bureaucracy (B), one such goal is *consistency* (treating like cases alike);
2. in the case of professions (P), the equivalent goal *individualised treatment* (treating each case on its merits);
3. in the case of the legal system (L), it is *due process* (letting everyone have their say).

Note that the bureaucratic (B) and professional (P) models are both 'top down' models while the legal model (L) is a 'bottom up' model.

Most people would support each of the goals referred to above, the challenge is to get the balance right both in general and in any particular set of circumstances. Thus, bearing in mind the competitive relationship between the three models of administrative justice, it is important to ask whether the overall justice inherent in the administration of social security could be increased through a different set of trade-offs from those that currently apply. Whether or not such a state of affairs could be brought about is quite another question.

An example

As an illustration of the variability in administrative arrangements which is to be found in different social security schemes I would like now to talk about Frank Bloch's comparative study of claims processing and appeal procedures in six industrialised countries – two in North America (Canada and USA) and four in Europe (Germany, the Netherlands, Sweden and the UK). You will find the article (which first appeared in the International Social Security Review) in the Reader.

Although this is not strictly relevant to our concerns, Bloch points out that the eligibility criterion (a demonstrated incapacity for work due to sickness, injury or disease) is the same in all countries. However, the precise disability standard (incapacity for all work, for regular work, for full-time work, for adequately remunerated work) differed from country to country.

At initial decision making stage, Bloch focuses on three issues:

1. assignment of responsibility for disability assessment (who is responsible for collecting the evidence?);
2. completion of evidence (who is responsible for providing the evidence?);
3. determination of eligibility (who actually makes the decision?).

In this lecture, we shall focus on the third of these questions.

In each of the six countries, claimants have a right of appeal from the initial decision. At appeal stage, Bloch again focuses on three issues:

1. internal review of eligibility decisions, i.e. review by the agency itself;
2. use of specialised appellate bodies, i.e. tribunals rather than generalist courts;
3. nature of post-agency appellate review, i.e. second and third tier appeals procedures.

In this case I propose to focus on the first question.

Determination of eligibility

There is considerable variation in the identity of the first instance decision maker. In two countries (Canada and the Netherlands) this is in the hands of 'professionals', in two countries (Germany and the UK) it is the responsibility of officials, in one country (USA) it is carried out by a mixed professional/official team and in one country (Sweden) by an independent bodies.

1. in Canada, decisions are made by medically-trained disability adjudicators (most of whom are nurses) who have access to a medical adviser in difficult cases.
2. in the Netherlands, decisions are made by a team comprising two professionals, a doctor (who controls the medical information) and a labour (employment) export.
3. in Germany and the UK, decisions are taken by Departmental officials. However, these are usually consistent with the recommendations of agency doctors;
4. in the USA these comprise a doctor and a trained disability examiner. Thus, the team contains professional and official expertise;
5. in Sweden, decisions are taken by an independent local insurance committee after hearing evidence from presenting officers. The article makes no mention of applicants.

Note: Canada and the Netherlands emphasise professionalism (P), Germany and the UK emphasise bureaucratic concerns (B), while Sweden emphasises legality (L). Different arrangements must surely be associated with different outcomes and different assessments of the adequacy of existing arrangements.

Internal (administrative) review and its relation to appeals

Four of the six countries (Germany, the Netherlands, the USA and, in effect, Canada) conducted internal reviews of first instance decisions when the study was carried out while two (Sweden and the UK did not). Internal review is usually conducted by superiors (or by specialist staff) who can consider new evidence and hear the case *de novo*.

Note: in four of the six countries (the Netherlands, Sweden, the USA and Canada) practice has changed (internal review has been introduced in some cases and abolished in others) in recent years or was under consideration when the study was carried out. Moreover, the UK can now be added to the list.

Arguments for internal review:

1. it reduces the number of appeals
2. it improves the quality of first-instance decision making
3. officials are more afraid of their superiors than of outsiders

Arguments against internal review:

1. without internal review, more decisions are reversed on appeal – independent appeal bodies have less stake in the decision and no interest in the outcome and they are less reluctant to reverse decisions than officials who work for the organisation.
2. internal review shows up the appeals process.

Note: internal (administrative) review emphasises bureaucratic concerns (B) while external appeals emphasise legality (L). Again, different arrangements must be associated with different outcomes and different assessments of the adequacy of existing arrangements. It is important to distinguish between *internal reviews which routinely precede appeals without substituting for them* and *internal reviews which may be introduced as an alternative to appeals* with a new appeal having to be lodged against an unfavourable reviewed decision. The first is uncontentious, the second less so.

Conclusions

On the basis of his comparative study, Bloch puts forward a set of model procedures. I think that this is misconceived. The approach to administrative justice, derived from Mashaw, which I have been arguing for suggests that we need to strive for an optimum balance of bureaucratic, professional and legal inputs to decision making but there will never be complete agreement as to where that optimum lies and, in any case, it will vary from country to country, from one programme to another and from one stage of the decision process to another.

Questions for discussion

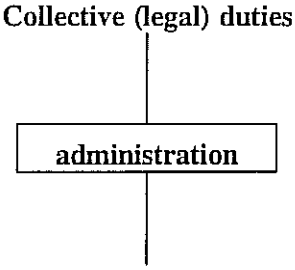
1. Is administrative justice a relative concept which has to be understood in the context of a particular system of decision making or is it an absolute concept with certain invariant characteristics?
2. Do you agree that, by and large, bureaucratic concerns are dominant in the administration of social security?
3. How can administrative justice in social security be improved? This question can be answered in general, in the context of your own country and in the context of particular social security schemes.
4. What are the relative merits of (internal) administrative review and (external) appeal to a court or tribunal? How, if at all, are they best combined?

ADMINISTRATIVE JUSTICE AND SOCIAL SECURITY

LECTURE 3

DISCRETION AND THE PROBLEM OF STREET-LEVEL BUREAUCRACY

The relationship between citizens and the welfare state cam be seen as a contact i.e. as a relationship of exchange between individual (legal) rights and statutory (legal) duties. These rights and duties are mediated in the administrative process.



[Recap from last lecture.] Individual legal rights entail collective legal duties but collective legal duties do not necessarily entail individual legal rights. At the same time, enforceable rights are the antithesis of administrative discretion. Thus, if individual rights are very strong, the agency would have little discretion as to how it enacted its duties. In fact, this is rather unusual and it is common for agencies to have a good deal of discretion (decisional freedom).

Where agencies have discretion, they can, use this to structure their duties i.e. their routine decision making in a variety of ways. They can formulate a set of rules to give expression to the intentions of policy making or leave officials free to exercise discretion i.e. to use their judgement. These two alternatives can be represented as two end points on a spectrum. In practice most decision making corresponds to some point between the two extremes.

agency discretion

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administrative rules — **officer discretion**

N.B. administrative rules and officer discretion are the end points on this 'scale' – guidelines and standards being in the middle of the scale.

Under a system of rules, administrative decision making is in theory, a function of the intentions of policy makers and officials have relatively little 'decisional freedom'. The rules may determine:

1. the conditions of entitlement, i.e. the circumstances in which a claimant will be entitled to benefit.
2. the procedures which must be adopted, i.e. the evidence a claimant needs to bring in support of his/her claims and what checks the officer will make before making a payment.
3. the amount of benefit (or services) a claimant will receive, in relation to his/her needs or income.

The application of the appropriate rule to the facts of the case will result in the correct decision.

For a variety of reasons, it may not be possible to formulate a set of rules.

1. the intentions of the policy makers may not be clear enough;
2. policy makers may lack the knowledge to formulate a set of rules;

3. policy makers may regard it as preferable to decide each individual case on its merits instead of subsuming each case under the appropriate rule.

In these circumstances, we can say that the individual officer has *discretion*.

According to Advise, this can be defined as follows:

> A public officer has discretion when even the effective limits of his power leave him free to make a choice among possible courses of action or inaction.' (p.4)

Advise' emphasis on the effective limits of an officer's power alerts us to the fact that discretion may be *legal* or *illegal*. Policy makers may have decided that public officers should have a choice. Alternatively, public officers may be able to exercise a choice by ignoring or bending the rules in circumstances where officially they are expected to apply them.

Advise' definition makes it clear that discretion may apply to the choice between action and inaction, as well as between possible course of action. It can also apply to the finding of facts as well as the processing of these facts, i.e. to the application of rules, guidelines or standards to the facts; it can cover procedural as well as substantive choices and can thus effect outcomes in a number of ways.

Arguments for and against administrative rules

for

1. rules lead to greater consistency;
2. rules ensure that like cases are treated alike (social justice);

against

1. rules lead to excessive rigidity unless they are continuously updated;
2. rules give too much power to the organisation and foster a passive response from claimants;

context

1. rules are associated with powerful bureaucracies, staffed by generalist administrators;
2. rules work best when coverage of benefits is fairly comprehensive and levels of benefit reasonably generous.

Arguments for an against officer discretion

for

1. discretion allows for greater flexibility;
2. discretion enables unlike cases to be treated differently (individualised justice);

against

1. discretion allows for the exercise of moral judgements;
2. discretion gives too much power to individual officials and fosters dependency;

context

1. discretion is associated with high status professional groups, e.g. doctors and street level bureaucrats
2. discretion works best when decision makers are trusted.

Note: discretion is often problematic when the pre-conditions for the professional treatment model do not apply, e.g. where there is no relevant body of specialised knowledge, staff are untrained, and there is no particular commitment to the clients' well-being (no service ethic). These conditions often apply in social assistance schemes.

According to Advise, the problem is not to choose between (administrative) rules and (officer) discretion but, rather, to find the optimum point on the rules-discretion spectrum. K C Advise (see excerpt in the Reader) that there was too much discretion in (American) public administration and that achieving an

optimal balance would therefore involve eliminating 'unnecessary discretion' and 'confining, structuring and checking' necessary discretion.

1. *Confining* – this involves deciding how much discretion each official should have: higher tier officials are often given more discretion than lower tier officials;
2. *Structuring* – this involves developing guidelines or standards in order to influence (shape) the exercise of discretion;
3. *Checking* – This involves ensuring that officials are made to account for the discretion they exercise.

However, it is important to stress that, in another context, achieving an optimal balance could equally well involve increasing the amount of discretion exercised by officials to a more appropriate level.

Illegal discretion and the 'biased' exercise of legal discretion often occur in *street level bureaucracies*. This term was effectively invented by the American political scientist, Michael Lipsky. According to Lipsky (see excerpt in the Reader):

> *street level bureaucrats* are 'public service workers' who interact with citizens directly in the course of their job. (p.3)
>
> *street-level bureaucracies* are public agencies that employ a significant number of street-level bureaucrats in proportion to their workforce. (p.3)

Examples of street level bureaucrats are the police, teachers, social workers and welfare (social assistance) workers. Although they are often employed by large bureaucratic organisations, their conditions of work give them a high degree of authority. In their day-to-day work, they frequently develop a policy of their own which can be, and often is, quite different from that intended by official policy makers. This policy emerges from the routines which street-level bureaucrats adopt and the practical solutions they develop in response to the situational pressures they confront – the fact that official goals may be vague and conflicting, that time and resources are in short supply, that demand for their resources often outstrips its supply and that they are under pressure to produce 'results'. In addition, street-level bureaucrats do not necessarily share the objectives of those responsible for policy making. They may see themselves doing their best in difficult circumstances but, seen from the outside, this may be seen to involve various forms of bias – stereotyping, routinisation, favouritism etc. This is illustrated by the following examples:

1. the fact that some unemployed persons may be easier to place than others may result in their being given priority over others;
2. the fact that resources e.g. for one off payments' are often in short supply may result in clients who are seen to be 'deserving' being given preferential treatment compared with clients who are seen as 'undeserving';
3. the fact that staff may be enjoined both to control potential fraud and to promote clients' welfare may result in the former taking precedence over the latter, especially where the suspicions of the staff are alerted.

The unofficial (legal or illegal) rationing policies which staff adopt may transform welfare agencies into powerful instruments of social control.

While rules give a great deal of power to those in charge of an organisation, and discretion (whether exercised legally or illegally) gives a great deal of power to individual officials, rights provide a means of empowering or protecting the client.

Arguments for and against claimants rights

for

1. rights foster a greater sense of independence among claimants
2. rights allow for appeals to an independent adjudicating authority

against

1. rights promote litigiousness
2. rights give too much power to claimants

context

1. rights are associated with the involvement of lawyers
2. rights tend to be invoked where the organisation an/or its staff are not trusted.

For social security systems in general and individual social security programmes in particular, we need to weigh up the arguments for and against administrative rules (associated with a bureaucratic model of organisation); officer discretion (associated with a professional model of organisation) and clients rights (associated with the model of organisation as a legal system). We also need to ask whether an optimal balance has been achieved and, if not, what an optimal balance would look like, and to consider how such a state of affairs could be brought about.

We can address the phenomenon of street-level bureaucracy in the same way. We need to ask whether problems are caused by the street level bureaucrats' exercise of discretion – which may be legal or illegal – and what, if anything can be done about them by strengthening bureaucratic accountability or increasing claimants-rights.

Questions for discussion:

1. Do you agree with the claim that 'rules give a great deal of power to those in charge of an organisation, discretion (whether exercised legally or illegally) gives a great deal of power to individual officials, and rights provide a means of empowering or protecting the client' and that the problem is to find the right balance between them? If so, how can the right balance be found?
2. Where in the administration of social security is discretion most often found and why is it frequently thought to be problematic?
3. What do you understand by the terms *confining*, *structuring* and *checking* discretion and are these the best remedies for dealing with problems arising from the exercise of discretion?
4. Are any or all social security staff street level bureaucrats?

ADMINISTRATIVE JUSTICE AND SOCIAL SECURITY

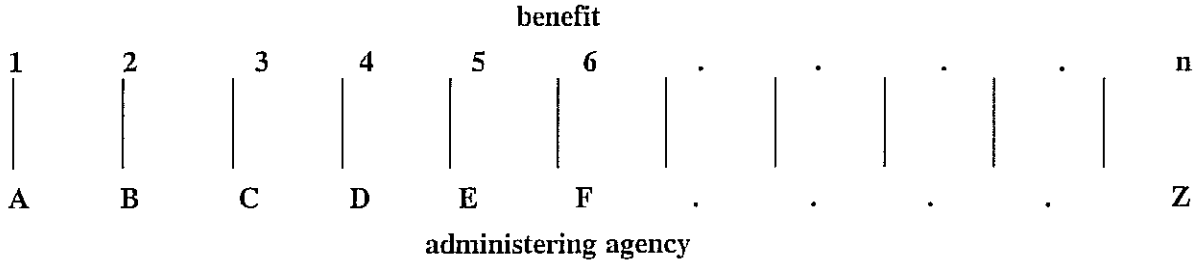
LECTURE 4

COMPUTERISATION AND ADMINISTRATION

In previous lectures, I have attempted to argue that bureaucracy is the dominant model of organisation in social security.

A bureaucratic model of organisation plus vertical division of labour results in a segmental (parallel) system of administration.

Different benefits are separately administered, often by different tiers of government or by NGOs. Thus, benefits may be administered by central (national) government departments, regional government, local government, public agencies, trade unions, employers organisations etc.



Problems with a segmental (or parallel) system of administration

From an administrative ('top-down') perspective:

1. high administrative costs – although these may be relatively small as a proportion of social security expenditure (often less than 5%), they are substantial in absolute terms.
2. a large number of administrative staff – in the UK, approaching 100,000 employees
3. considerable organisational complexity
   - I. duplication of data – where data is held separately for different benefits, the same data may be recorded many times
   - II. inconsistencies in data – where data referring to the same event is recorded in different ways for different purposes at different times
   - III. frequent need to transfer data resulting in massive communication problems – benefits are often interconnected and data may be transferred from files, by mail, phone or fax leading to many errors
4. endemic administrative inefficiency – characterised by unacceptable error rates and substantial delays

From the claimant's ('bottom-up perspective)

1. multiple points of access – claimants must know which benefits they are entitled to and where to claim them
2. repeated applications – claimants need to make separate applications and provide the necessary information on each occasion
3. confusion
4. delay
5. incomplete protection –claimants frequently do not receive all the benefits to which they are entitled by law

A complete solution would call for the *harmonisation* of the conditions of entitlement and a shift towards a more *unitary administration*. Computerisation of individual programmes is not enough and may even

make matters worse. In Britain, the dominant position of one government department (Department of Social Security, DSS) which has sole responsibility for policy making and (through the Benefits Agency) administers directly all except four social security benefits (unemployment benefit, statutory sickness/maternity pay and housing benefit) has enabled progress to be made on both fronts.

The *Operational Strategy* (launched in the 1980s) was the largest single civil computer project in Europe. Its aims were

1. to *improve operational efficiency* and *reduce administrative costs*;
2. to *improve quality of service to the public*, e.g. by treating claimants in a less compartmentalised, benefit by benefit manner, and more as *whole persons* with a range of social security requirements, and by improving the provision of information to the public;
3. to *modernise and improve working conditions* for the (somewhat reduced) number of staff administering the system.

Note: Aim 1 reflects interests of *government*, Aim 2 reflects interests of *claimants* while Aim 3 reflects interests of *administrative staff*.

Characteristics of the *Operational Strategy*

1. construction of a *unitary data base*, i.e. one record per person;
2. *three tier format* – partly for security reasons;
   - I. a *top tier* which was to consist of a claimant index and contribution records;
   - II. a *middle tier* comprising claimant records held in area computing centres;
   - III. a lower tier with local offices handling most (but not necessarily all) claims to benefit.
3. the processing of claims would adopt a functional approach with a horizontal division of labour, e.g. with administrative divisions responsible for collecting evidence, determining entitlement and implementing decisions

functions

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2 _____

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4. a phased programme of implementation. Note, this could have led to a very complex, criss-cross' (grid like) division of labour
5. the organisation of local offices was left open

During the 1980s, priority was given to developing hardware and software (Aim 1) and designing new job specifications (Aim 3). Aim 2 was neglected until a report from the National Audit Office (which reports to the Parliamentary Public Accounts Committee) pointed to a 150% rise in costs (from £713m in 1982/3 to £1719m in 1988/89) and a 55% fall in net savings (from £915m in 1982/83 to £414m in 1988/89 and questioned the viability of the whole programme.

The government appeared to believe that Aim 2 (improving quality of service to the public) would follow automatically from getting Aims 1 and 3 (improving efficiency and work satisfaction) right. However, with hindsight, it can be argued that Aim 2 (deciding what *quality of service* means and operationalising the *whole person concept*) should have been given priority. This is because these two concepts can mean many things and do mean different things to different people. Faced with this very critical report, the DSS belatedly commissioned some research on the meaning of quality of service and the whole person concept which I and a colleague (Roy Sainsbury) were invited to carry out.

We used a technique known as the *Delphi technique* to assess and distil the views of four groups of experts

1. staff in the DSS (including policy makers and systems analysts, at HQ and in local offices, representatives of management and trade unions);
2. welfare rights workers and representatives of pressure groups, academics and researchers;
3. representatives of other public and private organisations e.g. banks, building societies and overseas social security administrators).

The views of the 56 experts we consulted were surprisingly congruent. There was broad consensus that:

1. social security (in Britain) should be restricted to the provision of financial support;
2. greatest emphasis was placed on speed and accuracy (both of which are components of the bureaucratic model);
3. quality of service was seen to have other dimensions as well – there was wide support for a more personalised service with smaller offices (serving smaller communities) and more home visiting by better trained staff, i.e. for a *more professional service*, and for the provision of more comprehensive and intelligible information about benefits, and fuller and better explanations about decisions (in particular for the development of a 'user friendly' self-assessment package) which would make it easier for claimants to challenge decisions, i.e. for *greater emphasis on legality*.

Although the DSS initially showed a great deal of interest in our study, this quickly evaporated (as the National Audit Office and the Public Accounts Committee turned their attention to other issues) and our report was largely ignored when it came out.

The pursuit of reductions in administrative costs and improvements in cost effectiveness would appear to have strengthened the bureaucratic features of social security administration in the UK. This is reflected in the choice of *clearance times* and *error rates* as the two key performance indicators against which the 'success' of the Operational Strategy is being measured. Together they reflect a very bureaucratic conception of equality of service. The reductions in staffing required to meet the government's financial targets have resulted in a less personalised service (with fewer home visits and more impersonal communication from the staff) while the failure to develop a 'user-friendly' computer system (which was envisaged earlier on and could be done) have made it more difficult for claimants to understand how their benefits are calculated and to appeal against an officer's decision. Measured against a broader set of performance indicators, which reflected the professional and legal dimensions of quality of service), the early implementation of the Operational Strategy would have looked even less impressive.

Interestingly, many of these findings have been replicated in Ad Scheepers study of the import of information technology on the administration of social security in the Netherlands. This was a very ambitious study and involved:

1. the collection of data from over 80% of local social security officers (SSOs) in the Netherlands;
2. a detailed comparison of 7 SSOs where the use of IT was extensive and 9 SSOs which made little use of IT;
3. interviews with 65 case makers and 78 clients.

The main results were as follows:

increased use of IT resulted in closer integration within office and greater control by management. In high IT offices, the authority of the staff was perceived to be greater, operating procedures were more stringent and performance more tightly structured (p.202). Moreover, case-workers' discretion was reduced (p.207).

Although clients who saw their caseworkers saw them for longer (p.203) there was less contact between caseworkers and clients (p.208)

verbal competence replaced written competence but clients did not feel better informed and more often requested advice by an independent expert (p.204). Clients, especially those who lacked communication competence, felt their position to be weaker not stronger (p.207) and there was less congruence between caseworkers, and clients about aspects of the claims procedure.

Conclusion

It is probable that, in the UK and in the Netherlands, computerisation has led to improvements in bureaucratic efficiency. However, it is not clear that claimants, or caseworkers or the general public favours this if it entails a less personal service and less understanding of the claiming process. Bureaucracy, professionalism and legality may be competitive rather than mutually exclusive, but, especially where recourses are limited 'the internal logic of any one of them tends to drive the others from the field as it works itself out in concrete situations (Mashaw, p.23).

Is computerisation making the administration of social security even more bureaucratic than it was before?

Questions for discussion:

1. Do you agree that computerisation has a tendency to strengthen the bureaucratic features of the administration of social security?
2. Could computerisation work in other ways, i.e. by strengthening other aspects of the administrative process? Will this be possible without ploughing back some of the administrative savings resulting from computerisation?
3. What do you think of the 'one person concept'? Is it achievable?
4. Would the development of 'expert systems' make it easier for claimants to challenge officials?