

CULTURAL CONCEPTIONS OF ADMINISTRATIVE JUSTICE

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INTRODUCTION

In this article we report on research,¹ funded by the Nuffield Foundation, in which we develop an ideal typology of administrative justice – an analytical framework which captures the variations in how ‘administrative justice’ might be conceived. Following the work of the Yale law professor, Jerry Mashaw, we define administrative justice as “the qualities of a decision process that provide arguments for the acceptability of its decisions” (1983: 24). Importantly, then, our focus is on processes which produce decisions. There are many features of an administrative system, of course, which, although relating to decision-making, do not actually constitute the decision-making process itself. Matters such as rights of redress or the regulation of public administration are matters which could be, and often are, meaningfully discussed under the umbrella of ‘administrative justice’. But they are not the direct concern of this research.

The significance of this work is that it offers a way of thinking about the varied forms of justice of administrative decisions and recognises the possibility that different kinds of decisions might be suited to different forms of justice. Thus some kinds of decisions properly seek to reflect the preferences of those subject to them whilst others involve rationing of scarce resources in such a way that all preferences cannot conceivably be met, whilst a third class of decisions prioritises the professional judgment of needs over the preferences of the citizen. This observation, in turn, has implications for mechanisms of oversight and accountability for administrative decisions which need to be able to identify and adapt to such variety and make judgements about when it is appropriate.

CULTURAL THEORY AND PUBLIC MANAGEMENT

The central claim of our research is that a branch of cultural theory, developed by anthropologist Mary Douglas and others, offers a fruitful way to conceive of variety in the forms of administrative justice which can or might be observed in contemporary public management. Douglas developed her analytical framework as a way of facilitating meaningful comparisons between cultures – a framework for showing the basic ways in which cultures differ from each other (Douglas, 1982). The two dimensions of ‘grid’ and ‘group’ produce four ideal types of cultural bias – four extreme visions of social life. According to Thompson *et al* (1990),

the variability of an individual's involvement in social life can be adequately captured by two dimensions of sociality: grid and group. *Group* refers to the extent to which an individual is incorporated into bounded units. The greater the incorporation, the more individual choice is subject to group determination. *Grid* denotes the degree to which an individual's life is circumscribed by externally imposed prescriptions. The more binding and extensive the scope of the prescriptions, the less of life that is open to individual negotiation. (1990: 5)

¹ Our research will be reported in much greater detail as Halliday, S and Scott, C ‘A Cultural Theory of Administrative Justice’ in Michael Adler’s forthcoming edited collection *Administrative Justice in Context*, to be published by Hart Publishing.

From this very general starting point, cultural theorists have developed an exhaustive typology of cultural biases corresponding to the four possible combinations of the grid and group dimensions. They are individualism (low group + low grid), egalitarianism (high group + low grid), hierarchism (high group + high grid), and fatalism (low group + high grid). A cultural bias is a way of seeing the world, a set of mutually supportive assumptions and values that make up a coherent approach to life. The claim is that cultural biases may colour everything from the social construction of nature, to perceptions of risk and blame, to normative views about political culture.

Cultural theory has been harnessed and applied by Christopher Hood (1998) to the field of public management. Hood sets out a typology of ways of organising public administration, arguing that each cultural bias described by cultural theory produces a distinct and basic logic of 'good administration'. For the individualist, good administration takes place within a market and is driven by competitive forces. For the hierarchist, good administration harnesses and relies on expertise and authority within government. For the egalitarian, it is marked by consensus between public officials and the citizens they serve. It is harder to derive an image of 'good' administration from fatalism. Fatalism, as its name suggests, is a negative view on life. It lacks the trust in government associated with hierarchism, and the sense of freedom in a market marked by individualism. It entails an abandonment of a belief that outcomes can be achieved through positive action. Nevertheless, from this negative 'is' we may derive the positive 'ought' that public management should also reflect this unpredictability. In this vein, Hood suggests that fatalism can be linked to prescriptions for positively designing institutions. He links what he terms "contrived randomness" as such a prescription with a fatalistic cultural bias, referring to situations where chance is used as a central aspect of organisational life. Random internal audits would be an example.

A CULTURAL TYPOLOGY OF ADMINISTRATIVE JUSTICE

Given the conception of administrative justice with which we are working - "the qualities of a decision process that provide arguments for the acceptability of its decisions" (Mashaw, 1983: 24) – it is not a big move to suggest that a theory that animates variety in the ways of seeing public management generally, might offer a fruitful basis for better understanding variety in administrative justice. What characteristic decision-making processes emerge from these ideal types of public management and what are the justifications for them which reflect the various cultural biases?

'Hierarchist' administrative justice

The combination of high grid and high group means that considerable value is placed on authority and expertise. Within the hierarchist bias, government is trusted to act on behalf of the collective. Citizens are not expected to participate in decision-making processes. Public officials, rather, are expected to exercise their skill and judgement for the public benefit, and citizens are content to be passive objects of this official discretion – such is their station. Decision-making processes within hierarchism should support the exercise of expert judgement and/or the accurate and efficient implementation of higher orders.

'Egalitarian' administrative justice

By way of contrast, the egalitarian bias is sceptical and distrustful of governmental authority and expertise. It favours decision-making by consensus and seeks to equalise the position of all those in the group. In the context of administrative justice, this translates into citizens and public officials being equal partners in decision-

making processes. Decision-making processes within egalitarianism should be about reaching consensus and so marked by very high citizen participation.

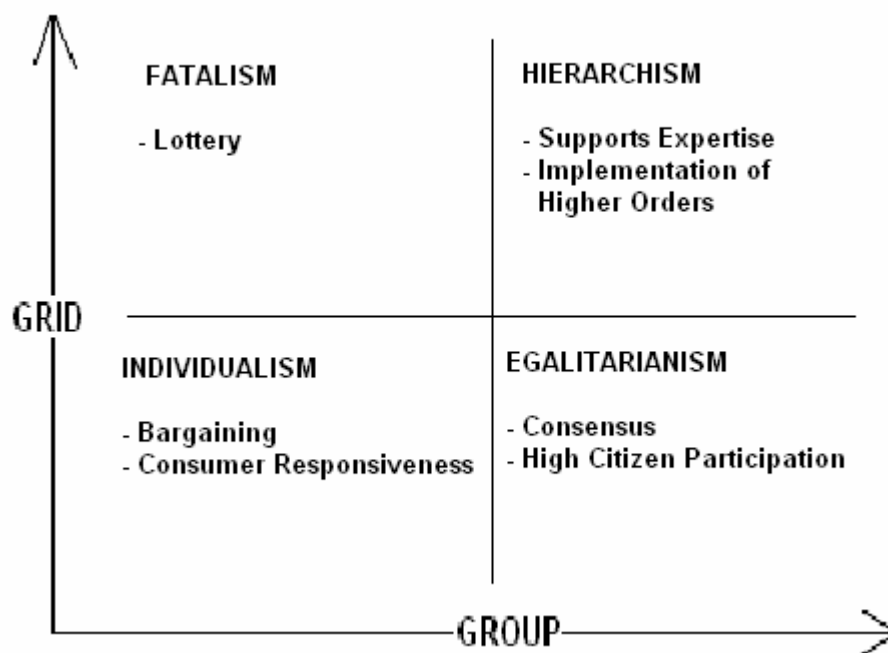
'Individualistic' administrative justice

Individualism is marked by the ability of individuals to negotiate their own way through life, untrammelled by group mandates and social rules and prescriptions. This produces a cultural bias which revolves around self-interest and personal responsibility and sees the market as the appropriate model of social organisation. Bargaining is the characteristic mode of decision-making in market settings. This is a decision process about reaching consensus (just like egalitarianism) but not within the context of a group. It is about matching supply to consumer demand. The extent of agency responsiveness to consumer needs and desires captures the core of the 'group' dimension of cultural theory when applied to administrative justice.

'Fatalistic' administrative justice

Fatalism represents terrain that has largely been unexplored in relation to administrative justice. We may follow Hood's example of developing a 'how-to-do-it' idea which reflects a fatalistic cultural bias. In this vein we can focus on the notion of a lottery as a characteristic decision-making process within fatalism.

Figure 1: A Cultural Typology of Administrative Justice



IDEAL TYPES AND SOCIAL REALITY

We should stress, of course, that the above are ideal types. Ideal types are analytical tools – combinations of dimensional extremes - designed to help us explore a much messier social reality. We should not expect to find such ideal types in pristine form in the real world. Nevertheless, by pointing to familiar decision processes within public administration and divining their underlying rationales, it may help to bring our typology into focus a little more. We suggest that it is not hard to identify elements of these ideal types at play within public administration.

Hierarchism

The familiar development and implementation of policy within many front-line public bureaucracies reflects a hierarchist bias. It is not hard to see in the design of policy programmes in domains such as social security, housing and social work the importance attached in some regimes to the implementation of rules and in others to the application of expertise.

Egalitarianism

A good example of importance being attached 'group' decision-making lies in consensus-seeking in regulatory policy-making (Coglianese, 2001). To a lesser extent, the stress on community consultation in areas of policy such as planning and education also reflects an egalitarian bias.

Fatalism

In relation to fatalism, there are some clear contemporary examples of government making decisions through random processes. The selection of persons to serve on juries is an example. Randomness is also seen in some allocation of school places and, in some countries, in immigration visa lotteries.

Individualism

It is clear that public service delivery has in recent decades been significantly affected by individualist approaches to public management. Managerialism, consumerism and marketisation in the public sector certainly reflect the individualist cultural bias particularly clearly. But is there any evidence of bargaining or the matching of supply to demand in contemporary administrative processes? In many policy domains, such as social security administration, it is difficult to conceive of such a thing. However, bargaining is far from uncommon in other policy areas such as environmental regulation enforcement (Hawkins, 1984) or telecommunications regulation (Hall *et al*, 2000).

CONCLUSION

If cultural theory is of value, it is in offering a complete set of family of forms of administrative justice. This permits us to see the connections between differing visions of administrative justice discussed in the existing literature.² It also points up the general failure hitherto to engage with the existence or potential of fatalistic modes. As an analytical tool it could be put to many purposes, though we have not pursued them in this research. In particular, given that typologies aid comparison, it might be used as a foundation for characterising changes in the style of administrative justice within particular public agencies across time, or between various public agencies within a fixed time period. Equally, it might generate questions about why particular modes of administrative justice become dominant at particular moments in particular agencies. More work in this regard, using a comprehensive typology such as this, would, we suggest, be beneficial for the field.

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² This point is developed in our forthcoming chapter (fn 1).

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