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Abstract

This article explores citizens' use of administrative hearings to appeal adverse government decisions about their welfare benefits. It draws on interviews with 79 welfare participants and observations of hearings and interviews with administrative law judges in a state in the United States to understand what hearings, and the act of appealing, mean to citizens. I find that beyond individual redress, participants view appealing as an opportunity to expose and repair social injuries and to renegotiate social relationships, social identities and their status as citizens. Their ability to rehabilitate strained social identities and establish their deservingness as citizens is contingent and variable, with hearings sometimes reproducing appellants' powerlessness and other times allowing for a more positive enactment of citizenship and social status. Over time, participants experience an increase in legal consciousness, using the knowledge of the law and bureaucratic practices they glean from hearings to better navigate the welfare bureaucracy. While this transformation of legal consciousness emphasizes individual gains rather than collective or systemic change, it cultivates a culture of complaining, rather than acquiescing, within the welfare bureaucracy.

Keywords

administrative hearings, administrative justice, public assistance, qualitative research, welfare

A significant and understudied form of civil justice is administrative hearings, used by government welfare programs in the United States to resolve disputes over benefits.

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Many of these government programs serve low income citizens, with administrative hearings serving as a type of poor people's court, adjudicating individual disputes over the provision of subsistence benefits.¹ As government-run hearings about government programs, they can also potentially illustrate and expose social inequities and policy flaws.

Scholars have disagreed over the usefulness of hearings and their place within government welfare bureaucracies that provide aid to the poor. Some assert that hearings are a critical forum for asserting individual rights and correcting bureaucratic mistakes (Houseman, 1990; Perales, 1990). Others contend that hearings do little to address issues of social equity or correct systematic errors, and further, are ill suited for citizens unskilled in the law and adversarial procedures (Simon, 1990–91; White, 1990). While the latter perspective in particular underscores the disjunction between 'the law on the books and the law in action' (Silbey, 2005: 324), it does not sufficiently account for the ways in which poor citizens themselves use hearings, and the particular meanings they attach to them. It ignores the complexity of the act of appealing, which may be motivated by multiple purposes beyond a desire for individual redress. It also does not take into account how citizens may define and shape their participation to suit their own needs, and how their engagement with the fair hearing system may shape and affect their legal consciousness over time. This view also neglects an understudied actor in the fair hearing system, the administrative law judge, and specifically how the varying ways in which these official actors 'talk' about the law and legal rules may affect citizens' experiences.

This study draws on interviews with 79 welfare participants and observations of hearings and interviews with administrative law judges to explore the ways in which poor citizens use and experience hearings. The study was conducted in a state located in the northeastern United States and involves denials of Temporary Assistance for Needy Families, a joint state and federal program that provides cash assistance and other benefits to poor families, and denials of medical assistance benefits from a variety of state and federal programs. The use of interviews and observations of appeals allows me to more deeply understand what hearings, and the act of appealing, mean to citizens.

I find that beyond individual redress, participants view appealing as an opportunity to expose and repair social injuries and to renegotiate social relationships, social identities and their status as citizens. Their ability to rehabilitate strained social identities and establish their deservingness as citizens is contingent and variable, with hearings sometimes reproducing appellants' powerlessness and other times allowing for a more positive enactment of citizenship and social status. Over time, participants experience an increase in legal consciousness, using the knowledge of the law and bureaucratic practices they glean from hearings to better navigate the welfare bureaucracy. While this transformation of legal consciousness emphasizes individual gains rather than collective or systemic change, it also cultivates a culture of challenging, rather than acquiescing to, the welfare bureaucracy. I also find that government officials sometimes join in this resistance, working in concert with citizens to challenge rather than reproduce structures of power and inequality.

Theoretical Framework

For the poor, and especially those who rely on government programs for basic subsistence, law is often omnipresent. As Munger (2004) observes, the poor are more likely

to encounter the machinery of government and administrative decision-making than wealthier citizens. Securing and retaining welfare benefits requires navigating a shifting maze of rules and regulations within a complex bureaucracy populated by state agents whose interpretation and application of the law have immediate and serious consequences for daily survival.

The poor must navigate this terrain under the strain of severe social stigma, with the poor treated less as citizens than 'as objects of discipline' (Munger, 1998: 936). The most recent major welfare reform in the United States, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) reaffirmed and amplified past perceptions of the poor as incompetent and incapable in the spheres of work and family, requiring a paternalistic government to prod them to self-sufficiency (Handler, 2003; Little, 1999; Seccombe, 2007). These cultural and social assumptions have been replicated and reproduced within welfare bureaucracies. Numerous studies have documented the surveillance, control and excess proceduralism that characterize welfare interactions, and which signify the stigma and low status associated with welfare use. (Bane and Ellwood, 1994; Brodtkin, 1986; Gilliom, 2001; Hasenfeld, 2000; Lens, 2007; Meyers et al. 1998; Sandfort et al., 1999; Soss, 2002). Indeed, much of welfare decision-making is conducted in a political, social and organizational context that emphasizes the denial of welfare rather than the granting of it.

However, also embedded in welfare law and legal discourse in general are the concepts of 'rights' and 'entitlement', notions that citizens have certain claims on government. This concept of rights found its original formulation in welfare law in the United States in 1970 in the landmark case *Goldberg v Kelly*, which held that the due process of the U.S. Constitution clause, which provides that a citizen cannot be deprived of life, liberty or property without due process of law, requires pre-termination hearings before welfare benefits are discontinued or reduced. Prior to *Kelly*, government benefits were regarded as a form of government largesse that did not fall within traditional common-law concepts of property. In a footnote of both practical and symbolic significance, the Court adopted Charles Reich's argument that government benefits were not gratuities but a property interest, thus restructuring the relationship between government and its citizens and requiring more extensive procedural protections before government benefits could be discontinued (*Goldberg v Kelly*, 1970: 261). The backlash against welfare rights and the elimination of welfare as an entitlement in the welfare reforms of 1996 have not destroyed the procedural rights of notice and appeal. The very law that dismantled welfare entitlements, the PRWORA, preserved the right of participants to a state administrative or appeals process when benefits are reduced or denied (42 USC 602 (a) (1) (B) (iii)). Thus, contained within the law itself are contradictory messages: that participants are not entitled to help, and that they are entitled to challenge their government when they do not receive help for which they are eligible.

Hearings are in essence a dedicated space for the have-nots to challenge the power of the state. Their design and function, however, suggest barriers to their use. They are structured as adversarial proceedings, thus requiring knowledge of the law and legal process, and hence often inhospitable to their intended users, who typically have low levels of education and little skill or expertise in the law. Unlike free standing courts, they are situated within the administrative apparatus of government agencies, thus inviting

leakage between the administrative function of dispensing benefits and the judicial function of reviewing such decisions. They may thus provide only the illusion of voice and participation, cloaking the sometimes arbitrary decisions of government officials with the gloss of procedural due process (Baldwin et al., 1992).

However, when law and legal institutions are viewed through an interpretive-constitutive lens rather than an instrumental one, the symbolic power of law to suggest social possibilities and shape interactions in non-legal ways becomes apparent. Through a reciprocal engagement with the legal process, individuals define and redefine their identities and where they are situated socially, and as citizens (McCann, 2004). This symbolic, more constitutive aspect of law is complex and variable, and dependent on context. It is not static or even necessarily consistent; a particular web of law and legal institutions can be experienced differently by people in similar situations and by the same person differently over time, as they learn, experience and interact with the organizational environment (Ewick and Silbey, 1991–92).

As previous scholars have found, there are also spaces and opportunities for resistance within even the most moribund and constraining of institutions (Ewick and Silbey, 1991–92; Sarat, 1990; Scott, 1990; White, 1990). As Ewick and Silbey explain, ‘through everyday practical engagements with power, individuals identify the cracks and vulnerabilities of institutions such as law’ (1991–92: 749). Studies attempting to capture the legal consciousness of the poor have reflected the duality of being both subject and agent; of engaging in acts of resistance alongside acts of acquiescence (Sarat, 1990; White, 1990). Lucie White, in particular, documents how hearings can both silence and give voice to participants. In recounting the experience of her client, Mrs G., at a hearing, she describes the numerous barriers she encounters, including the fear of retaliation from workers and the stigma of welfare fraud, which makes it harder for clients to speak with ‘confidence and credibility’ (1990: 37), as well as the law itself, which is too rule-bound to recognize human need. However, this same account also demonstrates that resistance and voice are possible, as Mrs G. ignores her attorney’s advice, and pleads, successfully, at her fair hearing for life’s necessities (a pair of Sunday shoes). White observes ‘her statement was a demand for meaningful participation in the political conversations in which her needs are contested and defined’ (1990: 49). Similarly, Sarat (1990), in his study of the use of legal services among the welfare poor, observes the tactical and other maneuvers they employ when dealing with an obdurate and confusing maze of rules and officials. More recently, Hernandez (2008), in her study of how poor and low-income women utilize legal services, found a ‘remarkable shift in legal consciousness’ (2008: 3) as they learned about the law, acknowledged its usefulness, and began to routinely leverage it.

Administrative hearings are the official forum for playing out such moments of resistance within the welfare bureaucracy; they are designed specifically for the challenging of official actions and decisions. In this study I examine whether such a highly stigmatized group as welfare participants are able to convert this space into moments of meaningful resistance. I look beyond any material gains they may receive, such as a reversal of a decision, at the social aspects of appealing, including the ways in which participants may use hearings to mend social identities and to repair and renegotiate their relationship with government officials and their status as citizens. I also explore how these moments of resistance and confrontation evolve over time, and whether they

result in transformations of legal consciousness and relationships with the dominant group. I also look at the role official actors play in the discouraging or inviting of such moments of resistance.

Research Design

This current analysis draws on ethnographic observations of 215 administrative hearings and interviews with eight administrative law judges and 79 participants in two counties of a northeastern state, one suburban and one urban. Of the 85 participants interviewed, 33 were recruited during the ethnographic observations from hearings I observed. The remaining participants were recruited through non-profit agencies serving this population, with purposive sampling used to locate participants who had received a notice denying, discontinuing or reducing their assistance and who had appealed the action. Participants were asked through a series of semi-structured questions to describe what it was like to apply for welfare, how they responded when aid was denied, and what happened when they went through the appeals process.

Of the participants in the suburban county, 50 percent were African-American, 40 percent were white, and 10 percent Hispanic. The average age was 38. Twenty-five percent had less than a high school education, 60 percent had a high school degree, and 15 percent had attended at least some college. Sixty-five percent had received assistance for three years or more. In the urban county, 67 percent were African-American, 12 percent were white, 14 percent Hispanic and 4 percent African-American/Hispanic. The average age was 44. Thirty-three percent had less than a high school education, 18 percent had a high school degree, and 49 percent had attended at least some college. Sixty-seven percent had received assistance for three years or more.

Data analysis was conducted using grounded theory conventions for coding the interviews of participants, interviews with the judges, and field notes. First, descriptive codes were attached to lines of data. Focused coding was then conducted, which involved identifying the most significant and/or frequent line by line codes, and choosing codes that best categorized the emerging themes and patterns (Charmaz, 2006). Analytical memos were used throughout the process, to define and describe various codes, and then to conduct theoretical coding, which is a way of rebuilding coded data and establishing a conceptual framework by exploring the relationships between categories and subcategories (Charmaz, 2006).

Some examples of major categories that emerged from the coding and analytical memos were 'strategies and tactics for negotiating the bureaucracy', 'nature of bureaucratic relationships', and 'processes and interactions at hearings'. An example of a major code under the category 'strategies and tactics for negotiating the bureaucracy' is 'wresting control', which is defined as the act/process of taking back the right/ability to make decisions and becoming an active agent attempting to exercise autonomy in an environment that restricts it. Another code under this category is 'speaking up' defined as asserting rights, fighting for one's needs, and challenging the terms and circumstances of welfare. An example of a code under the category 'nature of bureaucratic relationships' is 'stereotyping and stigma', defined as accounts where the participant described being treated as the stereotypical welfare clients (e.g. lazy, promiscuous, or irresponsible), or

with suspicion or distrust. An example of a specific code under the category 'processes and interactions at hearings' is 'proving moral worth' which I define as instances where appellants emphasized their identities as workers or as self-reliant citizens. I use these codes, among others, to develop my conceptual framework of appealing as a social act and hearings as a forum for reconstructing social identities.

Findings

Seeking Recognition

Seeking help from government welfare bureaucracies is often difficult and dehumanizing. Individual stories of need and misfortune are displaced by other more entrenched versions of who asks for welfare. The social construction of the poor as irresponsible, impulsive and disordered is embedded in welfare law, and leaves little room for alternative, and more positive, identities to emerge (Munger, 2002). These negative images structure interactions between workers and participants (Hasenfeld, 2000). The urgency of hunger, homelessness and poverty are obscured by the administrative task of 'verifying eligibility', the bureaucratic term for the series of paper transactions and documents required before help is provided. Life circumstances are condensed into discrete bureaucratic categories, such as 'available income', 'living arrangements', and 'family composition'. This emphasis on documentation and verification promotes a negative view of participants as untrustworthy and irresponsible, and in need of surveillance and control. The result is welfare relationships characterized by distrust, suspicion and stigma.

Such relationships often disappoint participants, who are hoping for something different. For them, applying for aid is both a bureaucratic transaction and a social relationship. As Lila,² a 34-year-old woman who has received assistance for much of her adult life, expresses it, 'I need more than just paperwork. I need someone to pay attention to me ... to be empathetic to what I need'. Rather than receiving attention, aid applicants experience impersonal and stigmatizing interactions. Carol, receiving assistance for the first time at age 37, describes how she was treated 'like a number as opposed to a person ... more like pushing papers'. Amy, a 28-year-old who has been receiving assistance for five years, explains, 'It's constantly people looking over your shoulder like you're going to steal something from them ... I kind of felt, honestly, like a criminal'.

Participants also experience a loss of control and a restriction of autonomy. Bureaucratic interactions are controlled by workers, who summon participants to appointments, only to have them wait. Decisions about what kinds and types of work activities to engage in and how many hours are set by bureaucratic rules. Documents are demanded and deadlines set by workers for their receipt. Steven, a 43-year-old man applying for assistance for the first time, explains, 'It's like they have full control over you, full control over your children, you know, the whole nine yards'. Ned, 49 years old and like Steven a new applicant for assistance, sums up his experiences at the welfare center: 'It's hurry up and wait'. In other words, he must do everything fast, but the agency can take its time.

Crucial information about the type and amount of benefits is typically communicated through multiple written notices, circumscribed in form and content by the web of rules and regulations that govern welfare benefits. Arlene, cut off from welfare when she

began to receive SSI (see note 1 below) protests the sterile and unfeeling nature of these notices: 'Why couldn't there be something else in detail that he [the caseworker] had given me regarding my case being cut off? Instead of a notice in the mail which is so cold. It's like I haven't had a history with you'.

As previous studies have found, many welfare participants react by withdrawing and acquiescing (Gilliom, 2001; Handler, 1986; Soss, 2002). Fear of retaliation prevents them from speaking up to their workers, even in the face of error. Appealing is an uncommon act; most welfare participants do not use the hearing system.³ Many do not complain or request hearings, even when they perceive a wrong (Handler, 1986; Lens, 2007; Soss, 2002). They believe challenging their worker is either futile or dangerous, or both. However, acquiescence is not the only path that participants choose. As this author found when studying the characteristics of those participants who filed appeals; unlike their non-appealing counterparts they are more engaged with the system, refusing to accept it as is, instead choosing agitation over apathy (Lens, 2009). Their response to a depersonalized and dehumanizing system is to speak up and complain, including filing appeals. Likewise, Snow and Anderson (1987) found in their study of another highly stigmatized group, the street homeless, that 'bitching and complaining' about the, often assembly-line, service of those institutions that served them, allows them 'to gain psychic distance from the self implied and to secure a modicum of personal autonomy' (1987: 1352). It is a strategy for asserting selfhood that contradicts the stigma and stereotype that surrounds them.

Participants often described this social aspect to appealing, describing their injury as social and personal, and the decision to complain through any of the channels available, including filing a formal appeal, as motivated by more than the need to correct a substantive wrong. Diane, a 44-year-old woman who has been receiving assistance for four years, explicitly portrays her complaints as an act connected to her sense of self-worth and social identity. After recounting the various and different ways she complains, she explains, 'They feel you're less than because you are on social services. But I let them know I am somebody'. To Diane, speaking up is a way to assert her individuality and gain social ground.

Louise similarly identifies speaking up, or complaining, as a response to perceived social slights. As she explains:

It was the environment's cause ... I'm coming in and I'm being hospitable to you [her worker] and you just, you know, just are being very nasty and ignorant towards me for no reason. And I'm wondering – I'm putting all the blame on myself but then I'm looking at the fact that it's not my fault – that's just the way you are really. You don't treat me like I treat you then, why, I'm gonna say something about it.

Louise wants her welfare relationships to be of social equals: she expects both parties to treat each other well. She also expects the worker to get to know her personally. When the worker is 'ignorant towards [her] for no reason' and 'very nasty', she initially blames herself, internalizing the social message of low social status. But she then rejects it, and instead decides to complain about it: 'You don't treat me like I treat you then, why, I'm gonna say something about it'. There is an edge to her complaints, and she describes how

‘I had to scream on’em, holla at’em’. When she is told ‘I can’t come in here like that’ she responds, ‘Why not, because you’re a public servant and that’s your job to service the client ... you’re getting a paycheck – you supposed to work certain hours; you supposed to service your client. Customer service is job one’. She hence attempts to invert the hierarchical relationship between worker and client, placing herself on top, with the worker there to serve her. Rather than accept what for her is a deeply stigmatizing and demoralizing welfare relationship, she tries to transform it by complaining, including by filing appeals.

Recasting Social Relationships

Once in the hearing room, participants utilize hearings in ways that go beyond the instrumental use of adjudicating disputes. Participants also view hearings as an appropriate forum for addressing social as well as material injuries, and recasting their relationships with government officials.

Lisa is one such example. An older woman applying for public assistance for the first time after an illness, she is angry about how she was treated. As she enters the hearing room, and even before the hearing starts, she explains that the office where she filed for an appeal ‘told me to come here, if nothing else to vent’. The judge responds, describing it as ‘legal therapy’. Before describing her substantive complaint, she explains ‘what I didn’t get is being treated like a human being’. She pulls out a written statement prepared for the hearing and reads from it:

I requested this hearing because of the way my claim was handled. I worked my whole life but I was treated unprofessionally and disrespectfully. I never met a worker. I was treated like a number. In the greatest country in the greatest state [this should not happen].

She embellishes on her complaint, detailing the many times she was ignored and treated rudely. For her, hearings were a forum for addressing not only substantive mistakes, but a place to seek recompense for the social wounds she experienced on the front lines.

Lisa appears to receive her recompense at the hearing. The judge and agency representative⁴ first listen patiently, without interrupting. They spend the next half hour patiently explaining the rules. The agency offers to troubleshoot and figure out if she is now getting the correct amount, and explains that in contrast to the front lines, where there are ‘lots of cases, not enough time’, at hearings there is more time to explain the law and reasons for a decision. The judge concludes the hearing by telling Lisa that he ‘will pass on to my Commissioner your complaints about the service’. He also tells her that ‘she has an absolute right to express this, to be treated right’, that ‘this is a public service’, thus validating her complaint of social injury. As the hearing ends, Lisa, now visibly calmer and less angry, says to both ‘thank you very much. All I wanted is somebody to explain what is going on like you are doing now’. She thus gets from the judge what she did not get from her worker – individualized, empathetic, and personal treatment – with the hearing serving, in the words of the judge, as ‘legal therapy’.

Conversely, judges who fail to respond to appellants’ social expectations are judged harshly, with appellants highly attuned to the ways in which judges show them respect or

not. Those who did not take the time to explain, or who spoke harshly, were viewed negatively by appellants, who described feeling ‘chastised’, ‘downgraded’, ‘stupid’ or ‘embarrassed’. Their experience also triggered feelings of stigma and shame, as they described being treated ‘like a criminal’ or a ‘low life’. They tended to view the fair hearing system, and the judges who populated it, with skepticism and distrust, and to believe that there was no distinction between the judges and the local office. As one appellant described her experience, ‘it’s just all social services’. In short, their experiences reinforced their lack of faith in the system, and hence their ability as citizens to challenge it.

Reconstructing Social Identities

In addition to reconstituting social relationships, hearings also provide an opportunity for reconstructing the negative social identities imposed by both welfare law and workers on the front lines. Participants’ brief and instrumentally focused interactions with workers provide few opportunities to present a more individualized and complex self. Front-line interactions are scripted by workers, who decide their form and content. There is little time or room for participants to counter negative stereotypes and assumptions about who they are and why they are poor. Hearings, though, are initiated by participants. While hearings are informal, they are still structured by the rules of the adversarial process, which gives each party an opportunity to talk. Participants often use this space to construct a social identity in the mainstream of society rather than its fringes.

To accomplish this, participants sometimes present their cases not as legal problems, but as stories of misfortune. Bruce is an older man with an artificial leg whose application for Medicaid was denied because of excess income. He tells the judge he wants him ‘to be more aware of [his] situation’ and explains that he lives in a small apartment in his mother’s house, that his wife divorced him, that he has three kids, one with mental problems. In another case, a denial of Medicaid becomes a saga of a young disabled woman trying to work and live independently from her parents. A denial of day care becomes a story about a husband disabled with a brain tumor, and a wife forced to work with young children at home. Through these stories participants communicate their individuality, and reframe their requests for help from a personal failing to hard luck.

Participants’ narratives often focus on their work identities. Work and self-sufficiency create a dividing line between the deserving and undeserving, between who is considered a ‘good’ citizen and who is not in our society (Handler and Hasenfeld, 2007). Participants have absorbed the message that work is paramount. It is central to their identities, and they are aware that seeking welfare damages their social standing. They often incorporate work histories into their testimonies, whether or not work histories are relevant. Although Bruce’s prior jobs are unconnected to his denial of medical aid, he explains, ‘I just want it to be on the record. I tried working several times. I used to work. At age thirteen I went and caddied . . . I worked my whole life . . . My wife worked’. He wants to make sure that his work history is part of the official composite of who he is; he wants it ‘on the record’. John, challenging a determination that he is presently physically able to work, explains that he ‘worked for 20 years’. Penny, appealing a reduction in medical services, explains that she ‘worked in hospitals my whole life’. Jill is convinced that as soon as she ‘actually showed documentation [at her hearing] that I was trying to

do something with myself both of them kind of eased up. Like it seemed like I was a better person then I guess to them in their eyes’.

Participants also tailor their testimony to address another powerful narrative about welfare participants, which is that they prefer to rely on government rather than themselves. Thus Bruce also tells the judge ‘I could apply for section 8 but I didn’t’⁵ and that he’s ‘not trying to get anything out of the state’. Others make similar claims, often reiterating that this is the first time they have asked for help, and only as a last resort.

Like the act of complaining, such narratives serve both utilitarian and expressive purposes. Participants want to establish their credibility and win their case. Because much of welfare law is focused on their behavior, a strategy that weaves into their testimony attestations of good behavior is helpful. But participants also use hearings in a deeper and more expressive way. Hearings offer them a public space within the welfare bureaucracy to reconstitute social identities and repair social relationships damaged on the front lines. Sometimes participants seek to expose how poorly they were treated, and have another government official make up for it. Other times (or at the same time) they use hearings to present a better, more preferred, version of who they are. Drawing on socially sanctioned and positive narratives of the responsible, hard-working and self-sufficient citizen, appellants generate personal and social identities designed to restore their self-respect and dignity.

Defining Rights, Entitlement and Citizenship

Welfare law embodies, both practically and symbolically, conceptions of rights, entitlement and citizenship. The current law, the PRWORA, eliminated the entitlement status of welfare, while still recognizing government’s obligation to care for the needy under certain circumstances. The law also emphasizes a citizen’s responsibility to act and behave in certain ways in order to be eligible for benefits. This tension between individual responsibility and government obligation routinely surfaces in the hearing room through disputes over eligibility for benefits or compliance with eligibility rules. Which obligation is emphasized in the hearing room, government obligation or personal responsibility, sends messages about appellants’ rights or entitlement to benefits, and hence their status as citizens.

The judge, as chief choreographer, largely shapes which is emphasized. Some judges stress the appellant’s responsibilities over the agency’s possible errors. A case illustrative of many others involved a work sanction, where the judge chastises the appellant for not contacting the agency to tell them she could not attend a work appointment because of a conflict with school:

I don’t know why you wouldn’t pick up the phone and try and contact them [and say] I’m not going to be able to make it but I’m working on it and I could get it to you by this date. Why wouldn’t you do something like that? Why wouldn’t you follow through?

The appellant’s explanation that she tried to call but ‘it rings out or just the line goes dead’ is ignored by the judge, who chooses throughout the hearing to focus on the appellant’s failings, rather than the agency’s failings. In another case the judge explicitly

moralizes, telling the appellant it is his obligation to work, despite his disability. In a different case, the judge chastises the appellant for not keeping his papers in order. Such responses suggest to appellants that hearings are a forum for scrutinizing their behavior, rather than the agency's, and for enforcing not their rights, but their obligations. Such encounters expose participants to, and reinforce, the larger societal narrative of the dysfunction and irresponsibility of welfare participants. It strengthens their sense of stigma and shame. As one appellant explained: 'The judge won't look at you. The body language is you're not there ... You walk into these things as the guilty party'.

In contrast, some judges emphasize the agency's errors and are quick to openly criticize the agency. They actively interrogate the agency and scrutinize agency records, revealing defects and errors in the handling of the case, and forcing the agency to withdraw the notice denying or discontinuing benefits. They sometimes use pejoratives when describing the agency, acknowledging the 'snail's pace' at which they do things, and the confusion that often reigns on the front lines. They provide appellants with helpful advice on how to negotiate such a demanding and arbitrary bureaucracy, making it clear that appellant's problems lie in the agency's actions, not their own. During such hearings the judge and appellant are joined, even if briefly, in agreement over the agency's dysfunction. Appellants' views of the welfare bureaucracy as arbitrary and capricious are validated by another government official, who is more powerful and of higher status than front-line workers. The appellant is positioned as more someone who is entitled to a certain level of service from their government, free from error and undue hassle. They are also legitimized as citizens, in sharp contrast to their usual stigmatized personae. As one appellant exclaimed after her hearing, where the judge uncovered evidence that the agency had wrongly denied her benefits, 'the judge had my back'. Such judges were routinely described by appellants as fair and respectful, willing to listen and professional in their demeanor.

Certain types of appeals go beyond a dissection of agency error and invite more explicit 'political conversations' (White, 1990). As noted above, decisions to deny, discontinue or reduce benefits are communicated through formal notices, which appellants often find indecipherable. Interactions with welfare workers are also abrupt and quick, with workers spending little or no time explaining the rules and regulations to participants. Consequently, participants request hearings when they are confused about the law and unaware of its parameters. As Gary, an appellant who was denied medical assistance explains, 'Nobody could give me an answer, so I figured I'd find out myself by appealing'. These appeals often do not involve factual disputes or subjective determinations but fixed budgetary, income caps or other provisions that render appellants ineligible for aid, and which the judge has no leeway to change.

Individual fault or responsibility plays no role in these hearings and participants' individual worthiness is not being judged. Instead the law itself, including its wisdom or sense, occupies center stage. This invites a different type of dialogue, with appellants often using hearings as a platform for questioning the soundness and logic of a law that deprives them of needed benefits. Participants plead their cases using conceptions of rights that flow not from the law, but instead from their everyday understanding of what citizens in need should expect from government. They translate administrative categories and legal formulas that obscure human need into a discourse that emphasizes social claims and moral obligations. This conception of what Gilkerson (1992) calls 'everyday rights'

emerges from 'the belief that one should not be abused, mistreated, taken advantage of, harassed, insulted, or denied access to the means for securing life's necessities without adequate justification' (Gilkerson, 1992: 901; see also Sarat, 1990; Yngvesson, 1989).

Shawn is an example of one such plea for 'everyday rights'. He is an older man in need of surgery but without medical insurance. After being told at his hearing how much he must spend on medical bills before he is eligible for Medicaid,⁶ he says, 'That's impossible for me. I don't have the money. How is someone supposed to survive off it? I need a gastro. The doctor is holding off from [it]. My life is hanging in the balance'. He uses both the personal 'me' and 'I', and the more distant third person 'someone', arguing that the law is flawed; it does not work for him, or for others like him. Hannah uses a similar approach in arguing her case, appealing to the practical and the pragmatic, talking in dollars and cents rather than in the currency of the law. Discontinued from assistance because of excess income, she explains to the judge her wages at Home Depot are too low to provide for herself and her three children and to pay for her schooling. She thinks she would be better off not working and returning to the homeless shelter where the agency would cover all her expenses, including possibly school. She explains, 'I can't get ahead. I don't want to quit school. I want to get off welfare ... [they] want you to stay on assistance forever'. Nancy, challenging her emergency shelter contribution,⁷ echoes her complaint:

I don't mind paying my portion, but it will leave me only 45 dollars. I need to have the first month's rent. I don't mind paying, but D.S.S. [the Department of Social Services] wants you to get on your own two feet and how am I going to do that? How am I going to get school clothes ... send her in rags?

Some judges respond to such pleas by deflecting responsibility elsewhere. They deny their own agency and power and emphasize they have no choice but to apply the law. When one appellant argues against the income rules, which render his family ineligible for medical assistance, the judge responds, 'That's what the Medicaid regulations require us to do. It's not us. It's the regs'. Another appellant, suffering from lung cancer and applying for public assistance for the first time at age 50, challenges the 45-day waiting period for benefits. The judge explains, 'It's the law. Welfare reform. Congress/states decided to make a 45-day waiting period for single adults'. 'We have to follow the laws' and the law 'is not set by anyone in the [hearing] room' are familiar refrains echoing through these cases. Such responses cast both judge and appellants as victims rather than agents in the face of the law.

Other judges (and agency representatives) go beyond explaining the limits of the law; they also criticize it and even urge political action to change it, thus lending legitimacy and force to appellants' complaints. As one judge observes to an appellant denied Medicaid because of too much income: 'I know this is somewhat arbitrary. Don't yell at me. Call your legislator'. When another appellant complains that he has no money to pay his Medicaid spend down, the agency replies:

I have to tell you I agree with that. The legislature sets the amount across all the states, across the nation. I can't change that. The judge can't. I guess the legislature can if they got realistic. But I can't do anything about it.

Similarly, when another appellant complains that the medical assistance guidelines don't consider clients' real-life expenses, such as car insurance or transportation costs, the agency replies, 'It's decided by the legislature. Have to talk to them if you want to change them. The only answer I could give is a sarcastic one. The amounts are ridiculous and I have to apply them'.

Judges (and agency representatives) sometimes also problem-solve and advise appellants of alternatives. In a case involving the denial of medical assistance because of excess income, the agency provides detailed information on applying for other government programs, encouraging the appellants, a young couple, 'to get right on it'. Instead of deflecting questions, the agency encourages them, patiently explaining the intricate rules. Similarly, at another hearing, Gary, a young college student working at Target but ineligible for medical assistance concludes, 'I'm stuck here'. In response, the judge and agency explore other options with him, including his eligibility for employer-based health care or student health care benefits from his university. The agency's usual persona – as strict guardian of public funds – is replaced with the image of a helpful government employee advising citizens on maximizing benefits. As Gary explains in a follow-up interview, even though he does not agree with the law, he was 'satisfied with the way, I guess, they went about it ... They pretty much explained everything ... they gave me the time to ask questions that I wasn't sure about, and they explained them, I felt, appropriately'.

Lessons Learned Over Time

Unlike other legal institutions, such as small claims courts and other lower courts where citizen contact is episodic and more isolated from everyday life, welfare relationships comprise a series of ongoing and evolving interactions. Because welfare benefits are difficult to obtain and keep, there are many opportunities for appeals, and participants are often repeat players in the hearing room. Participants also regularly cycle through front-line decision-making, the appeals system, and then back again to the front lines. These continuous and fluid interactions can result in shifts in legal consciousness over time.

Appealers arguably begin with a different legal consciousness than most other welfare participants. They are more rights conscious, having chosen to appeal when most do not. They perceive themselves as 'fighters', always willing to challenge a perceived wrong (Lens, 2009). Nonetheless, they described a perceptible shift in legal consciousness, and their rights, attributable to their fair hearing experiences. This shift usually focused around a heightened awareness of the rules of the game, and potential sources of information about it. For example, Carlene explained that since her hearing, 'Now I read what the Commissioner sends me'. Aaron similarly described that since his hearing he keeps all of the papers from the welfare center, including mass letters about general eligibility changes, which he used to throw away. As he explained, instead of assuming he was not entitled to certain benefits, 'I'll keep those from now on and maybe at other times I can be, how come it says this and I'm not entitled to that?' This increased sophistication about the legal rules trickled down to participants' interactions on the front lines. As Liz explained, 'When I go back to the center a year later I'm a little bit more aware of what is going on, what has to be done'.

Over time, appellants also built up an attachment to the fair hearing system, routinely integrating it into their repertoire of responses to the welfare system. Virtually all viewed it as a lifeline, and the last chance to get what they needed. With success rates relatively high, filing an appeal was a pragmatic and rational act.⁸ As Sandy described it, hearings are 'the only thing you got'. Maxine explained, 'If I appeal I get a better chance, you know, I get more of a chance than just letting them say no'.

This view persisted even in the face of losses and disappointments and even among those critical of the process. Arthur is one such example. He felt downgraded by the judges; as he explained he 'would like to see judges that are not there to give you the third degree but to find a way to help you. Not to make me feel like I'm wrong all the time'. But at the same time he insisted that he would continue to appeal: 'Regardless of whether I fail or not, I have no choice. It's the only way to fight for the fact that the system screws up. I may win. I may not. But I have no choice'. Thus, over time, participants learned to take the good with the bad, expecting to win some and lose some, encounter bad judges and better judges, but to nonetheless persist. In short, losses did not deter them. As Dennis succinctly explained, fair hearings are 'a necessary evil'.

Participants thus integrated hearings into the maze of activity required to maintain benefits. Most viewed it pragmatically like Dennis did, although for a few, like Wendy, it had a more heightened symbolic significance. As she explained, 'It makes you feel proud, that you're a citizen and that you have rights and demand your rights'. But while it enhanced participants' ability to play the game a bit better, it did not invest them with more faith in the system and its ability to respond to their needs. Even winning a hearing (which many had), did not alter their basic perceptions of the welfare system as unchangeable and intransigent. As Lucy put it, 'You go around in circles and you come back and you're in the same spot'.

Participants thus distinguished between the fair hearing system's utility for addressing individual complaints, and more structural and permanent change. Virtually all thought such a change was unlikely, especially through individual efforts. 'I'm just one person' was a familiar refrain. Nearly all agreed more collective efforts were needed. Despite their cynicism towards the likelihood of change, several of the participants were involved in organizations that advocated for the rights of people receiving welfare.⁹ However, for some, individual and isolated efforts were all they could muster. As Kathy explained, 'I'm to the point where I'm just tired, that I'm just gonna have to do as best I can to do what I've got to do'.

Discussion and Implications

Structured on the adversarial legal model, hearings are situated in the language of law and legal rights. They embody foundational notions of due process and the rights of citizens to challenge arbitrary government power. They are commonly used, however, by a subset of citizens, the welfare poor, whose deservingness as citizens is continually questioned by both the welfare bureaucracy and the larger society. Negative stereotypes of welfare participants (that they are promiscuous, lazy and irresponsible), are widely shared and distributed in our society; the harshness of welfare relationships is their personal and local manifestation (Munger, 2002).

As Goffman (1969) noted, people in public spaces strive to save face when confronted with stigmatizing and difficult situations. One approach, well documented among welfare participants, is to profess belief in the negative stereotypes ascribed to your social group, but then proclaim you are an exception (Briar, 1966; Seccombe, 2007; Soss, 2005). While this may deflect the sting and stigma of stereotypes, it does not erase or confront them. Filing an appeal offers an alternative, and more constructive, response for managing stigma. It signifies agency, power and visibility, all of the elements participants perceive as lacking in their welfare relationships. As Cowan (2004) observes in his study of the internal review process for homeless individuals seeking housing, participants look for ways to 'insert themselves into the process' (2004: 944). Appealing also connotes a certain status; it communicates the belief that one is entitled to certain things.

Hearings, though, are a source of both opportunity and peril when used as a vehicle for reconstituting social identity and social relationships. Situated within the welfare bureaucracy, and populated by government officials from the dominant group, they may replicate past welfare interactions rather than transform them. The social identity appellants are compelled to put forth, one that emphasizes work and self-sufficiency, is the socially sanctioned one, and often at odds with their current circumstances. Thus they cast about for past remnants of social status, the job once held, the independence once achieved, rather than asserting a right to receive welfare simply because they are in need. In this way, a potential moment of resistance is subverted by the prevailing discourse on who is or is not deserving of help. Instead of contesting welfare stereotypes, participants are forced to acquiesce to them, thus leaving unchallenged the basic premises on which they are based. In this way structural or institutionalized causes of poverty are elided, and the dominant welfare discourse remains intact.

A similar dynamic underlies how notions of rights, entitlement and citizenship are constructed in the hearing room. The emphasis in welfare law on individual responsibility leaves appellants' individual actions open to scrutiny, thus transforming a forum designed to protect appellants from the arbitrary power of the state to one emphasizing their own perceived failings as citizens. Judges who choose to elevate individual responsibility over agency error leave intact agency procedures and practices that hinder access to benefits. They thus treat appellants less like citizens entitled to certain benefits and services from their government, and more like subjects that must conform to the often byzantine and arbitrary demands of the state bureaucracy.

However, such a result is not inevitable, suggesting the flexibility and fluidity of the fair hearing system, and the state actors within it. While some judges obscure agency error, other judges seek to expose it. Such judges provide both substantive and social relief. Substantively, they insure hearings function as intended, providing a corrective to bureaucratic arbitrariness and error. They also serve an educative function, teaching appellants the rules of the game. As Simon (1983) has observed, in the often opaque world of the welfare bureaucracy, officials are the primary source of what rules apply and when. On the front lines such information is often not accessible or understandable. Judges who edify and instruct appellants thus serve an important function by contributing to appellants' legal sophistication and hence ability to navigate the bureaucracy. Such judges also minimize the risk inherent in 'speaking up' and complaining, where one's status as a victim often becomes more pronounced and visible as a consequence

of engaging with the law (Cowan, 2004). It buttresses and supports those welfare participants described by Sarat (1990) as making the best use of the law and legal rules available to them, rather than surrendering to the ennui of the powerless.

The messages sent by such judges are also social messages as to what appellants, as citizens, can expect from their government. Rather than legitimize front-line administration, they adopt appellants' view of it, validating appellants' negative perceptions and experiences of the welfare system. They thus counter, albeit briefly, the burden of stigma by treating appellants as citizens with valid complaints, entitled to be heard. As Tyler (2006) has found, interactions characterized by respect, impartiality and an opportunity to speak and be listened to are important to citizens. It signifies social inclusion and social worth, the very ingredients missing in welfare relationships. Such treatment also challenges past constructions of the welfare system as a near impervious web of surveillance and control (Gilliom, 2001). Rather, as Cooper (1995) found in his study of local municipal government officials, it suggests that state bureaucracies, and the actors within them, are more temporal and malleable sites, capable of acting in concert with even the most disenfranchised of citizens.

Those cases where the law itself, rather than the appellant's actions, were the focus also present an opportunity to redefine citizenship. As judges attempt to explain fixed budgetary and income rules, more explicitly political conversations can occur. Judges who criticize the law and those that engage with appellants in problem-solving construct a different identity for appellants. While blaming the legislature for appellants' plights or suggesting other options may be diversionary tactics, ways of hiding behind the law even while explaining it, these statements nonetheless cast appellants in a different role. It defines them as citizens entitled to assistance from their government, a more positive and powerful identity than that of welfare recipient. Such a dialogue invites participants to project outward to the political world, increasing the likelihood that they will connect their personal needs with larger, social needs and notions of citizenship, while also validating the 'sensibleness' of their claims (Levitsky, 2008; McCann, 2004).

To be sure, the gains from fair hearings are mostly individual. Participants may learn another route through the rules, but not a way to change those rules. The knowledge gleaned from fair hearings better prepares appellants for dealing with the welfare bureaucracy, but does not change how the bureaucracy deals with them (White, 1990). Unlike the welfare rights movement of the 1960s where fair hearings were used as a form of 'legal civil disobedience' (Kornbluh, 2007: 66) to press for more systemic change, appellants' use of hearings is more immediately pragmatic and individualized. They are making the best use of the limited legal tools available to them, tools unlikely to overtly trigger more collective change, especially in a social and political environment antithetical to even the notion of welfare rights.

However, filing an appeal can serve as a defense against the most helpless form of powerlessness, where grievances are not named, fatalism and alienation replace agency and voice, and resistance remains unimagined (Lukes, 2005). In short, small and individual acts of resistance are preferable to none at all and 'may prefigure more formidable and strategic challenges to power' (Ewick and Silbey, 1991–92: 749; see also McCann and March, 1996). Thus while hearings may not lead directly to political and collective action, they still fertilize the soil from which it may spring, providing a breeding

ground for germinating grievances among those citizens who have chosen voice over exit within the welfare system.

Notes

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1. In the United States there are a variety of government benefit programs at both the federal and state levels. Programs that provide benefits to low-income families include the Temporary Assistance for Needy Families program (TANF), a joint state and federal program that provides cash assistance, and Medicaid, also a joint state and federal program, which provides health insurance benefits. The focus of this study is on these needs-based programs, which are administered by local counties under the supervision of individual states. Among the state supervisory responsibilities is the implementation of an administrative hearing system (commonly referred to as 'fair hearings'). Solely federal programs include Social Security (OASDI), a non-means-tested benefit which provides cash assistance for the aged, blind and disabled, and Supplemental Security Income (SSI) a means-tested cash benefit for the same populations. These programs utilize an administrative fair hearing system operated by the federal government and are not the focus of this study.
2. To protect the confidentiality of the participants, all names are pseudonyms.
3. Appeal rates in the urban county are between 7% and 35%, while in the suburban county it is significantly lower, from between 1.1% to 3.5%.
4. The agency is represented at every hearing by county workers specially designated as fair hearing representatives and who only handle appeals.
5. Section 8 is a housing subsidy program for low-income citizens funded by the federal government.
6. The subject state allows certain individuals who exceed Medicaid income limits to be eligible if they spend this surplus, commonly called a 'spend down', on medical bills.
7. The subject state requires residents in emergency housing to contribute a percentage of their income to pay for the shelter.
8. The success rate in the urban county is 81%, in the suburban county the rate is 43%.
9. While filing appeals was a strategy advocated by the welfare rights organizations participants belonged to, many had appealed prior to joining an organization. However, it was not clear from the data that the experience of filing an appeal led to the decision to join. Many described their recruitment as occurring at the welfare center, where they were approached by members of the organization and offered support.

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