Street-level Discretion and Organizational Effectiveness in Probation Services

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IN HIS 19th-CENTURY commentaries, Max Weber (1946) tried to make sense of a rapidly changing world. Weber (1946), a German political economist, observed the Industrial Revolution transforming what was once an agrarian landscape into a capitalistic society. The period was marked by unprecedented mass production and consumption of goods (Thompson, 1967). Weber (1946) also saw the Prussian army—comprising some disparate territories—come together as it had not before and quickly defeat the seemingly superior military force of Austria. Amidst these events, Weber (1946) perceived that a common feature of the industrialized factories and the newly unified Prussian army was organization, which he identified as a key to possible collective success. This supposition became the basis of Weber's (1946) theory of bureaucracy.

Weber (1946) argued that industrialized factories are rational systems (which he termed "bureaucracies") in which the organization itself serves as a means for achieving desired ends "within the limits imposed by given conditions and constraints" (Simon, 1964, p. 573). The formal structure of these organizations serves the attainment of goals (Scott & Davis, 2007). A chain of command is a main source of power among workers as their hierarchical position defines the amount of power they hold (Weber, 1946). Formalization (creation of and emphasis on written rules and structured procedures) legitimizes inequalities in hierarchical relationships and is a normative control mechanism because workers are more likely to comply with directives exercised by

an individual holding a designated organizational position (Zucker, 1977). For Weber (1946), bureaucracies provide a clear roadmap to producing efficient, effective, and productive systems.

An inherent contradiction in Weber's (1946) theory is that top-down directives serve to achieve goals, but the attainment of these goals is contingent upon compliance from the bottom up (Etzioni, 1964). If, as Weber (1946) contests, the formal hierarchal structure is the preeminent source of power in an organization, how can workers at the bottom of the hierarchy have such control over the success of the organization? A major drawback of Weber's (1946) theory, according to critics, is its preoccupation with workers as an amalgamated group. The consideration of workers as individual actors reveals that low-level power exists because the bureaucratic structure affords these workers autonomy and considerable freedom in their daily activities, a reality known as discretion.

In this article, we will explore several aspects of this Weberian omission as they pertain to probation departments, given that these organizations exhibit high levels of bureaucratization. What is discretion? How is discretion exercised within probation departments? Why does discretion exist among probation officers? How does discretion affect organizational goal attainment? We will conclude by discussing how an understanding of discretion can inform policies and practices in probation departments and suggest ways to better inform this knowledge base.

What is Discretion?

A byproduct of the rational structure of bureaucracies is that it permits low-level workers to exercise a great deal of discretion. Hawkins (1992) characterizes discretion as the "means by which law […] is translated into action" (p. 11). Although workers exercise discretion at all levels of criminal justice organizations, it is most prevalent among frontline workers at the bottom of the organizational hierarchy, which Lipsky (1980) refers to as street-level bureaucrats. Lipsky (1980) refers to criminal justice line staff such as police and probation officers as street-level bureaucrats because they demonstrate a high degree of discretion and constantly interact with the public in the course of their duties. Street-level bureaucrats differ from low-level staff in most other professions because they have considerable power within the organization, their relationship with clients is non-voluntary, and the job encompasses a give and take of resources and referrals (Lipsky, 1980). Examples of street-level bureaucrats include teachers, probation officers, and social workers.

Discretion is an unavoidable aspect of the street-level bureaucrat's role. Organizations increase formalization to control the behavior of subordinates, but the unpredictable environment these workers face requires them to interpret and translate formal policies into practices that can be carried out (Hawkins, 1992). That is, because they do not receive specific instruction about how to implement policies, they have to make decisions about how and when to apply them. Lipsky (1980) explains why a high degree of discretion

exists among street-level bureaucrats: (1) The circumstances they encounter daily are too idiosyncratic to apply standardized guidelines; (2) They must constantly respond to the human element of situations, which is sporadic and ever-changing; and (3) Street-level bureaucrats are public servants, and discretion is imperative to the legitimacy of the state. As such, the rules and guidelines bureaucracies establish are ill-suited to the uncertain, vague, or changing situations that street-level bureaucrats encounter daily (Hawkins, 1992).

Discretion in Probation

On a practical level, discretion is essential to street-level bureaucrats because of resource, information, and time constraints. For instance, it is impractical for probation officers to cite clients for all violations incurred (Lipsky, 1980). Filing violations for every failed drug test or missed visit takes up too much time, though these are technically legitimate reasons to revoke probation. In recent decades, many correctional agencies have developed graduated sanction systems that prescribe escalating responses to certain violations. For instance, a positive drug test may result in additional drug treatment meetings or missed visits may lead to an extension of the probation term, but there is no violation incurred unless the behavior becomes repetitive (Wodahl, Ogle, Kadleck, & Gerow, 2013).

Systems like risk assessment instruments and sanctioning grids (both of which prescribe responses for probation officers) can be controversial among line staff (Makarios, McCafferty, Steiner, & Travis, 2012; Turner, Braithwaite, Kearney, Murphy, & Haerle, 2012) because of the limits they place on officers' discretion. Conflict need not break out, though, if managers can communicate the usefulness of these discretion-limiting tools and promote staff "buy-in." In most cases, these tools are not implemented due to a desire to take away decision-making from officers, but rather to standardize behavior, make responses consistent across probation offices, and improve efficiency (Makarios et al., 2012; Steiner, Travis, & Makarios, 2011; Turner et al., 2012). Such standardization is important because it allows agencies to deliver unified responses to violations and may limit potential complaints about discrimination against clients. Recommendations for implementation of these standardization tools will be discussed later.

The Limitations of Discretion in Probation Services

Weber (1946) discusses the attainment of goals at the organizational level; however, the existence of discretion within a bureaucracy means that individuals also directly affect goal attainment. Even though Weber (1946) theorizes that the organization itself serves goal attainment, the discretion individual workers exercise may also serve as a means to this end. First, discretion allows for the consideration of idiosyncrasies that help actors select an outcome that is appropriate given the unique circumstances (Feldman, 1992). For instance, a probation officer may treat an offender who has intellectual and developmental disabilities differently than an offender without cognitive limitations when determining whether to file a violation (Hutchison, Hummer, & Wooditch, 2013). In this situation, the differential treatment that arises from discretion is arguably more equitable than the universal application of rules that characterize Weberian (1946) bureaucracies. Second, discretion may yield more favorable offender outcomes. For instance, correctional programming has shifted from a one-size-fits-all approach to one based around tailoring treatment to an individual's needs and prior experiences. Studies support the notion that this individualized, discretionary approach to treatment is more effective than a formalized, blanket approach to treatment (Andrews & Bonta, 2010).

Although there are some benefits to discretion, empirical research in this area identifies a number of limitations that lead to ineffective and unjust outcomes. Street-level bureaucrats operate within organizations that Weber describes as rational because they coordinate actions in a way that efficiently leads to predetermined goals. However, irrational workers operate within this supposedly rational system.

Mounting empirical research suggests that a wholly rational decision-maker is impossible (March & Simon, 1958; Simon, 1955). Situations are far too complex and uncertain for actors to be rational in their decision-making. Simon (1964) argues that the information the actor has available, cognitive limitations, and the amount of time available for making the decision serve to "bound" or limit rationality. In essence, actors lack the ability to truly optimize their decision-making. For instance, a probation officer may decide not to revoke an individual's probation due to a minor violation of the rules or conditions of his or her supervision because she thinks another option—even just talking with the probationer—may resolve the situation. This use of imperfect options to make a satisfactory decision is known as "satisficing" (Simon, 1955). Because the officer is unable to consider every possible option she has available and does not have the capacity to foresee the consequences of her decision with accuracy, she will choose one of many options, even though no option may be the best solution. Workers also make trade-offs and allow ethical concerns to inform their actions, which may be detrimental to the success of the organization (Loewenstein, 1996). For example, an administrator facing budget cuts may opt to discontinue effective rehabilitative programming (Mair & Burke, 2013), and weighing on this decision may be her reluctance to lay off employees whom she has befriended.

Despite the thoughtful structuring of organizations to maximize efficiency, bureaucracies remain cooperative systems in the sense that they depend on the willingness of workers to achieve desired outputs (Barnard, 1938). Thus, the autonomy of street-level bureaucrats affords them the ability to resist actions that lead to specified organizational goals. A number of reasons may account for this opposition.

First, organizational goals may conflict with the workers' personal views or values. Scholars increasingly advocate for evidence-based policy, which is the process of implementing research-backed policies that we know will successfully reduce crime (Sherman, 1998); however, some practitioners resist organizational changes to this end (McCarty et al., 2007). A study conducted by Miller and Maloney (2013), for instance, finds that agencies adopt risk-need assessments (an evidence-based approach) to ensure that probation officers provide clients with appropriate services; however, officers frequently ignore the results of such assessments and even manipulate the treatment recommendations to correspond with their own treatment decisions (see also Viglione, Rudes, & Taxman, 2015). Weber (1946) suggests that bureaucracies serve the pursuit of organizational goals, but he neglects the fact that individuals select organizational goals. As such, specific organizational goals may favor some individuals over others (Scott & Davis, 2007). This is problematic, because a worker's values influence his or her actions. A nationally representative survey of wardens, probation/parole administrators, and other

justice administrators finds, for instance, that the value administrators place on rehabilitation for drug offenders predicts the extent to which their agencies implement substance abuse treatment programming (Henderson & Taxman, 2009).

Second, the means of reaching organizational goals may conflict with the worker's role expectations. Over the past few decades, for example, the correctional system has experienced a slow transition from a punitive agenda to one placing more emphasis on rehabilitation (Cullen & Gendreau, 2000; Gendreau, 1996). Such a paradigm shift requires that probation officers also shift their roles (the behaviors the organization expects of the individual) and become similarly more rehabilitative and less punitive, a change they may not embrace (Rizzo, House, & Lirtzman, 1970). For instance, in the wake of statewide policy changes that limited the use of incarceration as a response to technical violations, parole officers in California developed resistance tactics (such as piling charges to make a client's behavior appear more egregious) in order to circumvent this initiative (Rudes, 2012).

Third, a threat to bureaucratic control that Weber (1946) misses in his systems-level hyper-focus is that a street-level bureaucrat may elect to disregard directives because he or she no longer perceives the bureaucracy as the dominant authority. For instance, a "shadow structure" may operate behind the organizational structure. Shadow structures refer to the informal side of organizations, including unspoken rules and social networks that may work to circumvent formal procedures (Kanter, 1977). Viglione and colleagues (2015), for instance, examined the implementation of validated risk and needs assessment tools among probation officers in two adult probation settings. They found that while the use of assessment tools was widespread, *how* probation officers used the instruments misaligned with agency policy and the underlying principles of the assessment. Despite formal training on the tool, probation officers did not use the tool to guide their supervision or case management decisions and even manually adjusted risk scores based on their own judgment. This practice is problematic given that research finds that (1) probation officers overwhelmingly over-classify offenders based on perceived risk (Oleson, VanBenschoten, Robinson, Lowenkamp, & Holsinger, 2012), (2) recommendations from risk and needs instruments have been found to be superior to

gut-level decision-making (Andrews & Bonta, 2010), and (3) such manipulation introduces inconsistences across decision-making that arise from extralegal factors such as the probation officer's age and the offender's prior offenses (Reese, Curtis, & Whitworth, 1988). These examples demonstrate how social realities influence power structures within bureaucracies, rather than deriving power dynamics from the worker's position in the formal hierarchy, as Weber (1946) contests should be the case.

Organizational Practices to Maximize the Benefits of Discretion

The extensive empirical research above suggests that (1) the total abolition of discretion is impossible and (2) unrestrained discretion among probation officers warrants concern. These two realizations debunk the theoretical and practical usefulness of Weber's (1946) concept of organizational rationality. However, prior research also provides knowledge that can translate into effectiveness and efficiency by controlling and shaping how street-level bureaucrats exercise discretion. The following discussion outlines ways to overcome the shortcomings of discretion through policies and practices of the organization.

Probation departments can successfully manage discretion by increasing formalization—creating and emphasizing written rules and structured procedures (Scott & Davis, 2007). The addition of policies and regulations clarifies the role expectations and "make[s] it clear that some behaviors are absolutely inappropriate for criminal justice actors no matter what the justification" (King & Dunn, 2004, p. 351). Prior studies argue that formalization, such as imposing sentencing guidelines (Albonetti, 1997; Norman & Wadman, 2000), provides probation officers with guidance in their decision-making, in turn limiting unwarranted disparities in case management (see also Hagan, 1979; Pruitt & Wilson, 1983).

The benefit of increasing formalization is that without such direction, street-level bureaucrats may rely upon informal organizational norms that lead to inequity or injustice. One way to increase formalization within an organization is through education about key terms and practices that workers encounter daily. James Bonta and colleagues studied whether probation officers have the appropriate interpersonal skills, role modeling, and communication skills to work effectively with offenders in an evidence-based assessment

model of risk, needs, and responsivity. The general findings from their studies are that probation officers do not have these skills, but when officers do possess these skills, they do not use them in the context of offender supervision (Bonta et al., 2011). Officer skills are important because the probation process relies upon officers creating an environment in which offenders can change. More recently, attention has been given to enhancing the training of officers through curriculums that focus on structuring sessions, building relationships, and using behavioral techniques, cognitive techniques, and effective correctional skills (Bonta et al., 2011; Oleson, VanBenschoten, Robinson, Lowenkamp, & Holsinger, 2011). The premise is that in order for officers to use evidence-based practices, their workflow needs to be adapted to the principles of their work environment, including attention to intake and assessment, monitoring compliance, monitoring treatment compliance, and reinforcing cognitive restructuring (Taxman, 2014). Providing training and education to officers decreases discretion within agencies because officers can use a common language and an established set of skills.

Administrative policies may also be effective at changing the overall organizational culture and departmental norms, such as regarding the proper implementation of assessment instruments (Kunda, 2006). For instance, agencies could devise policies that require risk and needs assessments, inform case management plans, or prohibit the probation officer from using the override option to manually set risk levels without approval from supervisors. The benefit of increasing bureaucratization, however, may vary by the size of the probation department. Research suggests that the behavior of actors in larger departments is more loosely-coupled (Mastrofski, Ritti, & Hoffmaster, 1987), referring to a weak connection between the formal organizational structure and the behavior of workers.

Poor communication within organizations greatly impedes the cooperation of employees (Chen & Komortia, 1994; Dawes, McTavish, & Shaklee, 1977). The solicitation of advice from low-level workers increases their compliance with directives because workers feel heard. It is important for probation departments to open communication lines to inform staff of new practices or policies. Skogan (2008) argues, for instance, that when officers first hear about new initiatives at City Hall press conferences, they feel that the department values the input of the community more than it

does that of its own personnel. Organizational leaders within the department can play an important role in the communication process by starting conversations with staff about implementing new and existing practices. Just allowing street-level workers to express their concerns about new policies and practices can go a long way toward increasing employee "buy-in" (Farrell, Young, & Taxman, 2011; Rudes, 2012; Rudes, Viglione, & Porter, 2013; Schlager, 2009). Middle managers are the key to this process because they serve as the link between high-level administrators and street-level workers (Rudes, 2012). Communication from management may also effectively control street-level workers informally by offering encouragement or promoting adoption of practices (Marquart, 1986).

Sensemaking is another important aspect determining whether employees comply with discretion-limiting directives. Sensemaking is the process of extracting cues or making sense out of circumstances, which guides everyday actions (Weick, 1995). An organization's communication system can help workers make sense of directives because the meaning workers attach to an intervention strongly predicts whether they will implement it (Greenhalgh et al., 2004). For example, probation officers have been found to be resistant to basing case management decisions on the findings of risk and need assessment tools (Viglione et al., 2015). A sensemaking approach advises that probation officers will more readily implement and abide by recommendations of assessment tools if the agency expresses that the foremost intention is to produce fair and consistent outcomes among clients. Such a message combats the perception that an officer's discretion is being constrained by the department due to a lack of trust or disregard for their vast experience (Klein & Knight, 2005).

Directions for Future Research on Discretion in Probation Services

There is good reason to further our understanding of discretion as it operates within bureaucracies in general and probation departments in particular. To better establish policies and procedures that minimize the shortcomings while at the same time preserving the benefits of discretion, there are several recommendations for future research. Mastrofski (2004) outlines four problem areas of discretion research: weak research designs, insufficient generalizability, underdeveloped theory, and inattention to aspects of discretion

that have important implications for policy and practice.

A main critique of extant discretion research pertains to methodology. For instance, Mastrofski (2004) notes that even though studies demonstrate that college-educated officers perform better than those without a college education, research is "unable to distinguish the contributions of the actual educational experience in college from the selection effects of getting into college and completing it" (p. 594). Although randomized experiments are impractical in this instance, researchers need to (and can) develop studies that allow them to make stronger causal inferences. Further, researchers must pursue these ends in a variety of criminal justice arenas and settings: Studies on discretion in a large probation department in the United States may not be generalizable to a small probation department in Central Europe, for instance. Additionally, research on discretion among prison workers may not be generalizable to community corrections officers because they are situated within different bureaucracies with different organizational structures and goals (as defined by Weber, 1946).

Finally, research on discretion is only as useful as its ability to inform the policies and practices of probation departments. Empirical research predominately focuses on select aspects of discretion (e.g., sanction decisions, use of force), with insufficient attention devoted to numerous other aspects that could inform a wider breadth of worker behavior (e.g., critical thinking, deescalating dangerous situations). For example, finding effective responses to violations of probation and parole is important for several reasons. First, Bureau of Justice Statistics data show that more than a third of the new admissions to state prisons in the United States consist of parole (primarily) and probation violators (Janetta & Burrell, 2014). Research has shown that many of these violators can be safely managed in the community at a much lower cost than that of housing them in jails and prisons. Still, countless probation and parole violations are filed as preventative measures, and thousands of offenders are incarcerated. There is no reliable evidence to support this use of violations, and recent research from Washington State found no reduction in new criminal activity from confining technical violators (Drake & Aos, 2012). Janetta and Burrell (2014) suggest that there is both a political and research challenge facing parole and probation practices. The political challenge is to provide a robust set of

universal options for responding to violations beyond doing nothing or returning to custody. The research challenge is to illuminate the relationship between the criminal behaviors officers want to prevent and the use of technical violations. In other words, we must ask what behaviors technical violations are effective in preventing and compare the answer to our goals.

One way to minimize discretion in parole and probation is to introduce tools to guide officers in their decision-making at different steps of the probation process. For example, a risk and needs tool guided by probationer-level information can reduce discretion by introducing guidelines based on assessment results. Research finds that assessment results are not regularly integrated into case management and supervisory decisions (Viglione et al., 2015). Such neglect of information from these instruments is embedded in organizational factors beyond the control of individuals. The same study identified the need to better define how to use assessment information in probation practice. With considerable research supporting the usefulness of assessments for improving decision-making consistency and accuracy and appropriate supervision strategies (Haas & DeTardo-Bora, 2009; Luong & Wormith, 2011; Makarios & Latessa, 2013; Miller & Maloney, 2013; Oleson et al., 2011, 2012), there is greater need for future research on how the use of assessment tools can affect supervision discretion. Once researchers address these broader analytical concerns, they will facilitate the theoretical development of discretion and identify ways to encourage appropriate behavior more effectively through policies, practices, and structures.

Conclusion

Probation departments are constantly in search of ways to rein in the discretion of their officers. Researchers have an obligation not only to study discretion of low-level workers, but also to shed light on how to control it judiciously. After all, discretion of public servants is a necessary component of democracies (Berkley, 1970), insofar as rules sufficiently govern the behavior of actors (Hawkins, 1992). Thus, developments in how street-level workers exercise discretion must encourage behavior that produces fair outcomes while at the same time being free from tyrannical control.

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