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Paper:
Sharyn Roach Anleu and Kathy Mack, "Performing Authority: Communicating Judicial Decisions in Lower Criminal Courts," *Journal of Sociology*, 51:4, pp. 1052-1069 (2015)

In "Performing Authority: Communicating Judicial Decisions in Lower Criminal Courts," authors Anleu and Mack conduct a descriptive study that investigates the "ways magistrates communicate their decisions in criminal matters in open court" (1053). Authors Anleu and Mack use the following three measures of magistrate behavior for their analysis: whether a magistrate makes eye contact or speaks directly to the defendant, how the decision and reasons are ordered, and whether magistrate behavior is affected by the "presence of a legal representative" (1053). Previous academic work has shown that these behaviors may enforce or undermine judicial authority and legitimacy; accordingly, authors hope this examination of magistrate behavior will uncover interesting dynamics in the perceived legitimacy of the courts.

This research relies heavily on the sociological work of Max Weber, who theorized that authority "requires enactment or performance" as well as a belief in the authority (1052). Previous research conducted by others in the field has shown that legal authority must be "cultivate[d]" by the judiciary themselves, through use of formalized language, procedures or roles (1054). The effects of these performances are consequential: scholars have demonstrated that overly-routinized case processing can lead to the alienation of the defendant and reduce the legitimacy of the judiciary. Using Goffamn's interaction theories, authors reason that ordinary conversational techniques between magistrate and defendant, like face-to-face encounters, fall outside of typical institution-specific strategies used to promote "conventional detached adjudication" by magistrates (1055). These face-to-face encounters may serve to engage defendants in a unique experience of "procedural justice," and thus increase judicial legitimacy and authority by engaging defendant's "feelings of responsibility and obligation to obey rules and accept decisions" (1055).

Findings were based on an observational dataset compiled primarily by the study's two co-authors. Pre-printed templates were used to record information about standard information about each court case, observed additional room for case-specific comments. A total of 1287 cases presided by 27 different magistrates were observed and coded; data that were not obtained in court were later recovered from court records. Authors examined only those cases from the "general criminal list" (1057). The diversity of magistrates was found to "closely match the gender, age and years" distribution found among the general Australian magistracy.

Authors based their analysis on the percentage of times face-to-face encounters were used (looking or speaking) depending on the type of decision (sentencing or otherwise), presence of defense representative, and overall. Anleu and Mack also calculated the percentage of times a decision communication order type was used (result first, then reasons; decision only; summary then decision) again also depending on the type of decision offered. Chi-squared tests were used to determine the dependence of the categorical variables used in the analysis. Authors found that magistrates overwhelmingly look or speak to defendants in communicating all decisions, even when defense representation is present. Magistrates were also found to more often summarize, then offer decisions, for sentencing decisions than for all other decision types, in which "decision-only" communications were predominantly observed.

Anleu and Mack interpret the heavy use of face-to-face encounters as evidence that judicial legitimacy and authority are actively enforced through extra-institution techniques instead of "formal markers of judicial authority, especially in sentencing matters." (1065). Additionally, they assert that data show the strong preference for different communication methods, depending on the decision type (sentencing or otherwise) indicates that the importance of "delivery of sentencing decisions for enhancing legitimacy" for the judicial system. These assertions are rather flimsy given the sparsity of data collected. Indeed, these conclusions rely heavily on the accuracy of the underlying theories used (Weber and Goffman): magistrate behavior is expected to serve as a measure of judicial legitimacy or authority, but the data collected themselves offer no way to validate whether the underlying assumption that magistrate behavior actually affects perceptions of judicial legitimacy, and to what degree or in what manner. In their interpretations of findings, authors simply rely too heavily on unproven theory, undermining the trustworthiness of their conclusions.

Future studies might improve upon the gaps of this study by conducting follow-up interviews with the magistrates and defendants in question, providing insight into the actual perceptions of judicial authority and legitimacy by defendants, legal representatives, and magistrates alike. Did defendants, representatives and magistrates believe in the legitimacy of the judicial system after their courtroom encounter? A simple question like this provides researchers with a link between magistrate behavior and judicial legitimacy. However, researchers might also ask defendants and representatives which behaviors most strongly communicated the presence or lack of judicial legitimacy. Any additional first-hand information about perceived judicial authority by those involved could provide considerably more detail into the *mechanisms* of judicial legitimacy formation, and help authors parse out which behaviors deliberately, or incidentally, serve to increase judicial legitimacy. In the present research design, authors must rely on theory to do this work; data collection of this sort would enable authors to interrogate these relationships directly, instead of mediated by theory.

Furthermore, authors appear interested in the notion of "procedural justice" but are simply unable analyze this directly based on their existing variables. Indeed, authors are only able to infer whether defendants are treated as individuals rather than "legal or bureaucratic category" simply evaluating whether magistrates have face-to-face encounters with defendants (see discussion on 1065). While this might be a reasonable inference, it nevertheless assumes a significant correlation between face-to-face encounters and a "dignified" defendant experience which is simply unproven. A more precise measure could be obtained by asking the defendant directly (perhaps also in a follow-up interview) whether they believed they were treated with "dignity and respect." Indeed, this small adaptation would go far in helping authors more confidently apply their analysis to an investigation of procedural justice.

Overall, with the current research design, authors must rely too heavily on theory to generate useful findings. The minor adjustments to the survey design described above would considerably strengthen the confidence in any conclusions drawn, while also enabling researchers to a method to validate the assumptions of the underlying theories themselves. Though this study provides a solid groundwork for future work in the field, these select improvements are necessary to give results a more general applicability to policy or courtroom procedures.