

**ORGANIZATIONAL ROLE PERCEPTIONS OF LOWER COURT JUDGES**

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**INTRODUCTION**

In the past two decades, sociologists have increasingly recognized the importance of examining social control functionaries and organizations in their study of crime, law, and deviance. A social control system takes its form through the application of norms and law in the handling of cases presented to it (Schur 1968, 155; 1971, 82). Sociologists who study the law try to understand the creation and application of legal norms and find it rewarding to examine the behavior and characteristics of justice system functionaries. Here, we try to develop typological dimensions of the judicial role which have theoretical and empirical significance for understanding judicial action. From existing theory and research, dimensions of the judicial role are hypothesized, and the isomorphism of these dimensions with the role perceptions of a sample of lower court judges is examined.

Much of our knowledge of justice in the United States has been developed by political scientists. In the past, they have been concerned predominantly with the decisions and work of federal and state appellate courts. This is not surprising, given the traditional interest of political scientists in the development of constitutional law and in the relation of law and public policy (Schur 1968, 150). However, contemporary research by sociologists and political scientists has given greater attention to lower participants in the justice system, such as the police, prosecutors, and lower court judges (Bordua 1967; Skolnick 1966; Wilson 1968; Grossman 1969; Cole 1970). This study contributes to filling gaps in our knowledge of the lower judiciary. This is critically important for the sociology of law. The trial judge is a crucial and highly visible agent of societal reaction in the application of both civil and criminal law. The lower court judge presides in the only courtroom encounter which most people experience

(Shover 1973; Jones 1965, 125).

**JUDICIAL ROLE IN LOWER COURTS**

Numerous attempts have been made to establish and understand empirical regularities in judicial behavior. Since the emergence of the school of legal realism in jurisprudence, it has been assumed and often demonstrated that many variables exogenous to the law affect judicial action. This must be the case, given the great discretion present in judicial behavior (Davis 1969). Much research has concentrated on the personal background characteristics, demographics, attitudes, and personality features of judges (Schmidhauser 1960; Nagel 1961; Bowen 1965). Another approach has been the study of the judiciary through the examination of the content of the judicial role. This approach is most consistent with the sociological perspective of role theory which is based on the assumption that people seek predictability in their relations with others (Sheldon 1974, 73). The social world is viewed as a network of interrelated statuses within which roles are enacted. Social organization, including that of the justice system, may be conceived as such networks of statuses which are associated with role expectations (Turner 1974, 161). Merton offered the idea of the *role-set* as an explanatory element in role theory. A single status may involve an array of roles, to which Merton applies the term *role-set*, as the complement of role relations which derive from a particular social status (Merton 1957, 370).

The judgeship is a status most susceptible to analysis using this model of human behavior since it is a formally specified office involving numerous role relations with other actors, many of whom also occupy a formal status. The judicial role is comprised of the total normative expectations for judge, as s/he relates to other actors in the legal system (Ungs & Baas 1972, 343). Be-

havior on the bench is necessarily influenced by the judge's perception of these expectations. Moreover, it is apparent that there is clear potential for role-set relations which similarly may influence judicial behavior (Eulau 1969, 44). It is not surprising that social scientists have come to pay increasing attention to judicial role perceptions, though they have concentrated on a wide variety of aspects of the role.

Vines (1969) tried to isolate judges' perceptions of the purpose of the judicial role, and their perceptions of the nature of the decision-making process. He identified four purposes of the judicial role: 1) the *ritualist*, who views his purpose as an insurer of specified legal procedures, and who characteristically wishes to avoid policy involvement; 2) the *adjudicator*, who views the purpose of the role as primarily to serve to settle disputes; 3) the *policy maker*, who tends to see the primary function as the establishment of legal precedent; and 4) the *administrator*, who tends to see the role as providing rules for the internal administration of lower courts. Vines found three types of decision-making process: 1) the *law interpreter*, who primarily seeks to maintain constitutionally founded authority and separation of powers in judicial decisions; 2) the *law maker*, who sees new legal norms as the natural outcome of making decisions; and 3) the *pragmatist*, who emphasizes particularistic interpretations according to the unique nature of each case (Vines 1969, 467-474).

A major problem with Vines' typology is its empirical base. It is founded solely on the analysis of state supreme courts and does not necessarily apply to lower court judges. A further problem is the distinction between the purpose and the decision-making dimensions of the judicial role. These may not be empirically separable. For example, ritualistic and pragmatic perceptions may be more heuristically conceptualized as extremes of a *single* continuum of role orientations.

Ungs and Baas tried to isolate judicial role types, and then go a step farther to relate these types to variations in court level. They hypothesized the presence of the same types as those found by Vines

among Ohio trial court and intermediate court judges. Using a Q-sort technique for factor analysis, they demonstrated only the three types found by Vines. But they identified two added types: the *trial judge*, who heavily relied on precedent, due to a sense of being dominated by the threat of higher court review, and the *peacemaker*, who applies a pragmatic orientation to the job and sees the judicial role as that of an activist to maintain harmonious social relations (Ungs & Baas 1972, 347-358).

The hypothesized relation between these role types and the court level proved inconclusive. However, a study of Nevada state courts showed that appellate court judges gave more weight to the concept of justice in their decisions and that they had a more contemplative view of their role than did lower court judges, who were more oriented to law and precedent (Sheldon 1968). A study of Detroit judges' sentencing behavior also showed that they are probably more oriented to narrower, formal legal parameters (Jaros & Mendelsohn 1967, 487).

It seems that legal functionaries vary a great deal in their perception of the function and use of law in processing cases. Police activity varies by orientation to the use of discretion, which may either be a practical peacekeeping approach or a universalist "letter-of-the-law approach to law enforcement" (Wilson 1968; Skolnick 1966). Prosecutors differ in stressing pragmatic considerations in handling cases (Skolnick 1967; Grossman 1969; Cole 1970). The same is conceivably true with respect to judicial role orientations, including those found in the lower courts. One general factor which may affect the judge's perception of the role and, presumably, the decisions which the role entails is the inclination to view the law as a malleable tool to be used in obtaining particularistic justice in each case, by varying the emphasis on the use of law to obtain substantive justice and a smoothly functioning court. The judge who does not so perceive the purpose of law will be disposed to a more ritualistic use of it. The former orientation would suggest a judge whose attitude to the use of law is based on the practical considerations of ef-

ticient case handling, clearing the court docket, and settling cases rapidly and particularistically. S/he should be relatively more willing than the latter to accept arrangements such as negotiated pleas worked out by the prosecutor. Ritualistically oriented judges should show the opposite inclinations. As noted, such differences have been suggested in the literature. But this difference in judicial orientation has not been conceived as categories forming the polar extremes of a single dimension of role perceptions.

### RESEARCH HYPOTHESES

We hypothesize that there is a fundamental difference in the perceptions of the judicial role relative to the use of law, and we suggest that this variance forms what is termed the *pragmatic-ritualistic* continuum of role perceptions. This dimension of role perception will be present in the lower courts, but it could be found at all levels of the judiciary. Our hypotheses are restricted to the lower courts.

The type continuums which we hypothesize are constructed from the nature of the relation which judges may have with the members of their role-set. Previous investigators found that prosecutors vary in the extent to which their use of discretion in the charging process is influenced by other actors in the legal structure (Lefave 1965; Neubauer 1971). This could also be true of judges, particularly in the lower courts. Research on role-set influences in judges' behavior is limited. A study of the charging process in Cook County, Illinois, states that with respect to the judicial role, there is a convergence of the discretionary power traditionally used by both police and the prosecutor when preparing and screening cases (McIntyre 1968, 464). While the dominance of the judge here over some of his role-set members is a consequence of the formal legal structure in Cook County, a number of other factors could also affect the influence which role-set members have on judicial role performance. In some jurisdictions, and particularly in small and rural jurisdictions, judicial action may be constrained by the judge's personal relation with police and pro-

secutors, or by his sympathy with his/her problems as crime fighters (Caudill 1963, 353).

On the other hand, role-set dominance over the judge may be institutionalized as in the case of higher courts' power to reverse lower court decisions. "The judge in the court of original jurisdiction ... may also be aware of the shadow of an appellate court passing on any actions or decisions of his which are dubious. He must thus ... make his decisions with the possibility that the 'hidden perceivers' may engage in an appellate review and possibly rebuke him, either because of his application of a specific rule of law to specific facts, or because of the facts he has selected as important in a given case, or because he has behaved arbitrarily and unreasonably." (Winick et al 1961, 125).

When we consider the patterns of dominance and independence within the judicial role-set, two further dimensions of judges' role perceptions are possible: 1) a dominance-independence continuum may be conceived as relative to role-set members such as police and prosecutors, and 2) as a continuum of dominance-independence as perceived relative to role-set members with more formal power, such as the higher courts.

The judgeship is a status particularly suitable to role analysis. From the literature, three fundamental dimensions of the role of lower court judges are hypothesized: 1) *Ritualism-Pragmatism* as a continuum of perceptions of constraints of formal law on judicial goals and purposes, 2) the *Dominance-Independence* continuum of perceptions of subordinate role-set members such as police and prosecutors on judicial actions; and 3) the *Dominance-Independence* continuum of perceptions of the influence of superordinate role-set members, such as the appellate courts.

### DATA AND METHOD

The dimensions of judicial role perceptions which we have developed form three polar typologies. One scientific function of type construction is to order data so that characteristics obtained from a single case,

despite its uniqueness, reveal that is also characteristic of other cases of that type. Typologies are heuristic devices for reducing the diversities and complexities of phenomena to a coherently general level (McKinney 1957). However, in addition to their use in concept formation, constructed typologies may also function as theory in the sense that they are sets of interrelated concepts bound by the logic of their construction (McKinney 1969). By their nature, typologies must be treated as propositions in need of empirical verification.

Factor analysis serves as the statistical method by which we test for the presence of the three bipolar dimensions of judicial role orientations. After we calculate an array of correlations for the set of variables, factor analysis enables us to see whether there is an underlying pattern of relations to which the data could be reduced to a smaller set of factors which account for the interrelations in the data (Kim 1975, 469). The hypothesized typology continuums can be interpreted as predicted factors. We anticipate that statements of attitude and opinion by judges will be structured and that their responses will cluster by type sufficiently to become apparent in the factor analysis, if these dimensions are in fact present in judicial role perceptions.

Based on the content and implications of the typology, 15 Likert-type attitude questions were chosen. Judges' responses to them should cluster predictably as distinct factors if these role types are empirically present. The Likert-type questions represent ordinal-type scales, but there is support for treating them as if they conform to the interval scales required by factor analysis (Laborvitz 1970). The response scale was ordered as follows: Strongly agree; agree; neutral; disagree; strongly disagree. Unanswered questions were categorized in the third neutral category. The numerical values of the five-point scale were assigned in ascending or descending order consistent with the ends of the continuum. Five questions were used to form an index for each of the three bipolar dimensions, following Comrey's suggestion that each factor should ideally have five or more and not less than three variables to

represent it (1973, 191).

### **RITUALISM-PRAGMATISM QUESTION SET**

1. Even when the evidence in a case is weak, it is still desirable that the case should be tried in court so that it can be settled on the evidence.
2. Sometimes the judge must ignore proper legal procedures if it helps in disposing of criminal cases.
3. *Avove all else* the judge must adhere to legal procedure.
4. Trade and compromise are the backbone of the criminal justice system.
5. Maintaining the integrity of the law is the primary responsibility of the judge.

### **DOMINANCE-INDEPENDENCE RE SUBORDINATES**

6. The police almost never arrest innocent persons.
7. Judges and prosecutors should have a close working relationship.
8. The police should be consulted before the charges are dismissed or reduced to lesser charges.
9. Judges should not refuse to go along with pleas that are negotiated by the prosecutor's office.
10. Judges should consult with the prosecutor before dismissing or reducing criminal charges against defendants.

### **DOMINANCE-INDEPENDENCE RE SUPERIORS**

11. As much as anything, I want to avoid having cases in which I have presided overturned on appeal.
12. I would rather dismiss cases than try them and have them reversed on appeal.
13. A judge should try to maintain a low rate of reversal by the appellate court.
14. I try to run my court in such a way that my decisions are never reversed on appeal.
15. I worry about having my decisions overturned on appeal.

### **ITEM SELECTION**

These items were chosen, based on their face validity, from a larger group of opinion questions concerning problems and issues in criminal justice. They were contained in a

questionnaire which was mailed to all Tennessee judges presiding in courts of original jurisdiction. This survey was part of a larger study conducted in 1972-1973, which had the aim of determining the impact of a change in Tennessee law on driving while intoxicated (Shover et al 1976). The return of 90 completed questionnaires made a 63 percent response rate. However, this sample was reduced to those 70 judges presiding in Tennessee's General Sessions Courts to provide a more homogeneous group of respondents, in terms of the formally prescribed character of their judicial role. These are lower trial courts of no record having original jurisdiction in misdemeanor cases, including the function of holding preliminary hearings in felony cases.

### FINDINGS

Table 1 indicates that there were relatively consistent response patterns with small standard deviations. In each of the three sets, at least three questions show a significant difference from the neutral scale value. Factor analysis was computed with the program FACTOR of the *Statistical Package for the Social Sciences*, employing the Varimax method for orthogonal rotation, limiting the number of factors to three, to correspond to the number of hypothesized dimensions (Kim 1975, 478).

The factoring procedures yielded the factor matrix shown in Table 2. Since the resulting three factors closely resemble the hypothesized factor structure, the findings support the predicted continuums of judicial role perception. Factor 1 is primarily loaded as predicted on the *Dominance-Independence* continuum (Items 11-15) relative to the superordinate higher courts, except for Question 12. Since Question 12 loads about equally on two factors, we withhold judgment. The second continuum, *Dominance-Independence* relative to subordinates, shows the most consistent high loadings on Factor 2. Regarding the *Ritualistic-Pragmatic* continuum, only three items loaded heavily on Factor 3, while Questions 2 and 4 failed to load consistently, probably due to a conflict between the sense of the questions and the

**TABLE 1: RESPONSES ON JUDGES' ROLE PERCEPTIONS (N = 70)**

Item	Mean	Deviation
<b>Ritualist-Pragmatic</b>		
1	3.96	0.95
2	3.24	1.17
3	3.66	1.17
4	3.67	0.91
5	4.27	0.83
<b>Dominance-Independence: Subordinates</b>		
6	2.67	1.15
7	3.23	1.22
8	3.46	1.18
9	3.07	1.03
10	3.53	1.07
<b>Dominance-Independence: Superordinates</b>		
11	2.90	1.17
12	2.31	1.11
13	3.46	1.03
14	3.17	1.30
15	2.26	1.00

**TABLE 2: FACTOR ANALYSIS OF JUDGES' ROLE PERCEPTIONS (N = 70)**

Loadings, Factors:

Item	1	2	3
<b>Ritualistic-Pragmatic</b>			
1	.002	.177	.733
2	-.007	-.495	.197
3	.227	.071	.774
4	-.136	-.242	.041
5	-.068	-.110	.632
<b>Dominance-Independence: Subordinates</b>			
6	-.014	.630	.221
7	.064	.580	.126
8	-.254	.650	.338
9	-.048	.572	-.201
10	.027	.633	.119
<b>Dominance-Independence: Superordinates</b>			
11	.796	.055	.044
12	.496	.420	-.130
13	.694	.216	.152
14	.714	.003	.316
15	.683	.083	-.282

judges' perceptions of their role in court procedure. To ask if judges *ignore* proper legal procedures produced confused responses, and the reference to trade and compromise in legal proceedings may have been seen as illegal or unethical. Nevertheless, the high loadings on the remaining three questions give empirical support for accepting the presence of the Rutualism-Pragmatism continuum, since there are no contrary loading patterns on Factor 3 from any of the other questions.

## IMPLICATIONS

These typologies could have heuristic value for the study of other judicial traits. Theoretical questions could be raised regarding what factors are responsible for role-perception variation and what patterns of judicial action are influenced by them. Is there systematic variation in the community structures by size and type, in which a tendency toward one or the other end of the continuum is likely to appear? Does variance in judges' characteristics, such as political affiliation and activity, age, or time on the bench, produce a greater tendency to certain types of role orientation? Treating the typologies as independent variables, we might ask to what extent the content of judicial decisions can be predicted by the position of judges in these type continuums. Does the severity of sentence vary by type of criminal cases, or are patterns of predictable decisions present in civil cases which correspond to the typologies? Is there variation between types of modes of adaptation to new legislation and appellate decisions? We hope that such questions will stimulate investigation into a most important behavioral system which has been much neglected by students of the organization and distribution of justice in the lower trial court.

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