

Administrative Justice in Street-Level Decision Making

Equal treatment and responsiveness

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Abstract

Street-level bureaucrats' discretionary powers play an increasingly important role in public service provision and law enforcement. In order to deal with societal challenges, legislators and policy-makers leave room for professional judgment by formulating open laws, rules and policies. In making responsive decisions, i.e. treating different cases differently, street-level bureaucrats however not necessarily attach less value to treating similar cases alike. This chapter discusses how two notions of fairness – treating similar cases alike and treating dissimilar cases differently – are studied in street-level bureaucracy literature, and sheds light on the factors that influence how bureaucrats behave in this regard. Subsequently, it is explored how street-level bureaucrats could enhance equality of treatment when rules run out. The chapter concludes with an agenda for future research.

Keywords: street-level decision making, discretion, equality, equal treatment, responsiveness.

1. Discretion and uncertainty

As a social worker working for a municipality in The Netherlands, Tom implements the decentralized Dutch Social Support Act. The aim of this act is to help people to live at home for as long as possible. This is done by providing customized forms of social support, taking into account individual clients' personal circumstances. In order to provide services tailored to clients' circumstances, Tom visits clients at home and assesses whether and to what extent they are "self-reliant". This notion implies that clients are responsible for their own living conditions, and should in the first place rely on their own social network to solve problems. Whereas there are some guidelines, Tom is mainly expected to use his discretionary space to be attentive to the uniqueness of cases. Tom and his colleagues are not expected to uniformly apply rules, since this would hamper individualized treatment. In using this leeway, Tom often experiences uncertainty in deciding upon the best treatment. He regularly has discussions with colleagues about which factors may be taken into account. For instance, while Tom accepts an elderly client's reason for not wanting to ask his only, overburdened son for help in household activities, a colleague would be inclined to do so.

This hypothetical story describes just one example of the uncertainties a street-level bureaucrat encounters on a daily basis (e.g. Raaphorst, 2018). Whereas the story focuses on a social worker in the field of social welfare implementation (e.g. Trappenburg, Kampen & Tonkens, 2019), the focus on responsive decision making is certainly not unique for this particular policy and geographical context. Social welfare policies stressing clients' own

responsibility in e.g. finding a job or support in daily living, who need to be activated by social workers, have been widely adopted in Europe and the US (e.g. Borghi & van Berkel, 2007; Gilbert, 2004; Grootegoed & van Dijk, 2012; Trappenburg et al., 2019). Instead of offering standardized care to citizens based on formal entitlement, the focus has shifted to providing individualized services, tailored to clients' specific circumstances and taking into account what clients could do themselves (Grootegoed & Van Dijk, 2012). A similar shift towards more responsiveness is visible in regulatory policies, in e.g. Australia and the Netherlands, where command-and-control approaches to deal with non-compliance in the field inspection and taxation, have been replaced by approaches informed by responsive regulation theory (Ayres & Braithwaite, 1992; Mascini & Van Wijk, 2009). Here, street-level inspectors do not follow the letter of the law, but adjust their enforcement styles to the contexts they encounter. In contexts where responsive service provision or enforcement is stressed, street-level bureaucrats' discretionary judgment becomes more important (Mascini & Van Wijk, 2009; van Berkel, 2011). Instead of clearly demarcating who is entitled to a service by social policy implementers, or who needs to be subjected to closer inspection by law enforcers, laws and public policies involve vague terms left open for professional judgment (Bruhn et al., 2017; Dubois, 2014; Raaphorst, 2018; Zacka, 2017). This allows street-level bureaucrats to tailor their decisions to citizen-clients' individual circumstances and needs, i.e. to make responsive decisions. Responsive decision-making is, thus, prioritized by cutting down on the explication of laws and rules, which are typically used to guarantee equal decision-making (Hawkins, 1992).

Whereas granting professionals discretionary powers is suitable to achieve one aspect of the fairness equation, namely to do justice by treating different cases differently, it is less apt to guarantee other aspects of fairness, in particular, treating like cases alike (Bagaric, 2000).

The aforementioned story exemplifies how the social worker in this particular context experiences uncertainty about which factors should be taken into account, and encounters differences in approaches among colleagues. Nonetheless, public organisations, such as street-level bureaucracies, are expected to make decisions that are both responsive *and* consistent (Lipsky, 1980/2010). If it turns out that citizen-clients are treated unequally, this is often attributed to the subjectivism of bureaucrats' decision-making (Lipsky, 1980/2010). At the same time, citizen-clients who fall between the cracks of bureaucracy are seen as victims of rigid rule application (Zacka, 2017). This suggests that street-level bureaucrats need to walk a fine line between making decisions that on the one hand do justice to particular circumstances of a case, and on the other hand do not lead to unaccounted-for disparities. This is however a precarious task, because responsiveness and consistency are often seen as conflicting values (Kelly, 1994; Oberfield, 2010). Thus, the laws and rules that are used to minimize disparities hamper responsive decision-making, while the discretion granted to bureaucrats to make responsive decisions may lead to inconsistency, yielding wide varieties of 'arrangements' adjusted to particular circumstances (Raine & Dunstan, 2009).

In making responsive decisions, i.e. tailored to citizens' specific circumstances, street-level bureaucrats not necessarily attach less value to treating equal cases alike. To the contrary, recent research has indicated that bureaucrats struggle with vague policies and worry about the risk of unequal treatment (e.g. Bruhn, Thuman & Ekström, 2017; Raaphorst, 2018). Bureaucrats' conceptions of justice and the decisions they make based on that, directly affect the distribution of government goods and services. This chapter will discuss how two notions of fairness – treating similar cases alike and treating dissimilar cases differently – are studied in street-level bureaucracy literature, and sheds light on the factors that influence how bureaucrats behave in this regard. Subsequently, it will be discussed how bureaucrats could

make equal decisions when rules run out. The chapter concludes with an agenda for future research.

2. Treating similar cases alike

Within the classical literature on bureaucracy, uncertainty reduction is at the heart of bureaucratic processes and outcomes (Gajduschek, 2003; Thompson 1967/2003; Weber 1922/1947). Bureaucracy, in its ideal typical form, is characterized by ‘Precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs’ (Weber, 1978: 973). Within a representative government, adherence to rules and hierarchy is seen as necessary to guarantee that goals and rules laid down by elected officials are actually carried out. It also reduces uncertainty for citizen-clients, since a bureaucrat is ‘subject to an impersonal order to which his actions are oriented’ (Weber, 1978: 330), which ensures that citizen-clients in similar situations are treated equally. The classical literature on bureaucracy thus views bureaucracies as rational organizations that limit bureaucrats’ discretionary powers by setting strict rules and procedures, and a strict hierarchy. Bureaucrats are seen as neutral decision-makers who are not led by emotions, which are perceived as a threat to bureaucratic functioning, opening the door to arbitrariness and inconsistency.

The ideal type of bureaucratic organizations constitutes a top-down perspective, where strict implementation of rules and, hence, the control of bureaucrats’ actions is central. Scholars focusing on bureaucratic decision-making recognized the inevitability of the human factor (Downs, 1966; Simon, 1976). Classic theories of bureaucratic decision-making assume that bureaucrats are only ‘bounded rational’, implying that their cognitive capabilities to process information are limited, and that they use heuristics such as shortcuts or standard operating

procedures to reduce uncertainty (Simon, 1976; Jones, 2001). Despite this, bureaucrats were still seen as rational actors who pursue goals by applying knowledge prior to decision-making. Discretion was merely seen as a technical matter, involving no evaluative judgments of bureaucrats (Zacka, 2017). This constitutes a top-down perspective, implying that once formulated, laws and policies are simply to be carried out by policy implementers. Only since Lipsky (1980/2010) introduced a bottom-up perspective to policy implementation through his research, did the preferences and choices of individual street-level bureaucrats in specific working contexts become a subject of increasing scholarly attention. Rather than seeing policy as formulated by policy-makers as the end product ‘to be implemented’, Lipsky (1980/2010) pointed to the key role of street-level bureaucrats and bureaucracies in shaping actual policies. Research has pointed out that bureaucrats’ discretionary decisions are affected by their moral beliefs about worthiness and deservingness (e.g. Dubois, 2010; Maynard-Moody & Musheno, 2003). With this, the issue of unequal treatment became a core subject matter for street-level bureaucracy scholars. Equality before the law means that citizen-clients are not to be treated differently on an arbitrary basis. Street-level bureaucracy scholarship has studied unequal decision-making by examining and explaining street-level bureaucrats’ discrimination in decision making processes based on stereotypes about certain groups in society.

In this vein, street-level bureaucracy scholarship has advanced its theories and methods to explain and examine how citizen-clients are discriminated against in decision-making. Only recently scholars have begun simulating realistic scenarios in (quasi-)experimental research settings to assess whether citizen-clients’ belonging to specific social groups, such as ethnicity, social class, or gender, makes a difference in how they are evaluated by street-level bureaucrats such as teachers and tax officials (Andersen & Guul, 2019; Harrits, 2019; Pedersen & Nielsen, 2019; Pfaff, Crabtree, Kern & Holbein, 2020; Raaphorst et al., 2018). Based on the classic ideal

type of bureaucrats as ‘neutral decision-makers’ who treat like cases alike, one would expect them not to evaluate these scenarios differently. However, evidence indicates that social stereotypes about ethnicity, social class, religion and gender do affect bureaucrats’ decision-making (Andersen & Guul, 2019; Epp et al., 2014; Harrits, 2019; Headly & Wright II, 2020).

Research on discrimination or stereotyping by street-level bureaucrats points to various explanatory factors. At the micro-meso level, research points to the existence of psychological biases which are held to reduce uncertainty when bureaucrats need to make decisions in bureaucratic contexts, characterized by time and resource constraints (e.g. Andersen & Guul, 2019; Kelly, 1994). Taking another theoretical approach, studies also examine how stereotyping by frontline officials is prompted by broader societal beliefs about specific groups in society (Raaphorst et al., 2018; Harrits, 2019). Other research points to the influence of meso-macro influences. Epp, Maynard-Moody and Haider-Markel (2014), for example, show how institutions contribute to racial disparities in decision making by police officers, and show how the investigatory stop is a racially framed institutionalized practice, i.e. a common way of doing things supported by rules, the law and training. Again other scholars show how official policies reproduce racial disparities (e.g. Soss et al. 2011).

While research on explaining stereotyping and discrimination by street-level bureaucrats is flourishing, there is less attention to examining the factors that contribute to equal treatment. The street-level bureaucracy literature points to factors, again, at different levels of analysis. At the individual level, research stresses the relevance of role conceptions and justice beliefs (Kelly, 1994; Zacka, 2017). In line with Maynard-Moody and Musheno’s (2003) distinction between citizen agent and state agent narratives, role conceptions can be oriented more towards citizen-clients, or either more towards the law or rules. Bureaucrats who define

their main task mainly in terms of uniformly implementing the law or rules, will not be inclined to take into account citizen-clients' mitigating circumstances. Ideal-typically, state agents – depicted by Zacka (2017) as 'the indifferents' – will differentiate between citizen-clients only to the extent and in the way this is stated in laws and rules. A neutral and distanced stance towards citizen-clients is of key concern here, with a focus on handling cases as rapidly as possible, and refraining from looking at the particularities of cases. Similarly, by drawing on stories with teachers, Kelly (1994) distinguishes various justice beliefs, of which some prefer applying certain standards equally to everyone.

At the organizational level, processes of organizational socialization have been put forward as explanation for homogeneity in attitudes and behaviours of bureaucrats. This has mainly been studied by representative bureaucracy scholars, interested in explaining why minority bureaucrats do or do not make decisions about citizen-clients that reflect their own values (Sowa & Selden, 2003). Socialization can be defined as 'inducting actors into the norms and rules of a given community' (Checkel, 2005: 804). It involves a process of internalization of norms and worldviews, which 'are subsequently codified by a group of actors' (Saurugger, 2013: 894). This implies that there will be less room for individual differences in decision-making to the extent to which public bureaucracies strive for value-free and neutral decision making (Raaphorst & Groeneveld, 2019). Bureaucrats, then, are expected to act according to their organizational role (Van Maanen & Schein, 1979) and to not let their personal values prevail. Important to note is that organizational socialization could also spur unequal decision making, when informal rules ingrained in organizational practices promote racial profiling (e.g. Epp et al., 2014; Wilkins & Williams, 2008). Notwithstanding, rules, just like norms and guidelines, are typically treated as reducing bureaucrats' discretionary room (e.g. Hupe & Buffat, 2014; Miller & Keiser, 2020), which therefore minimize the influence of bureaucrats'

personal hunches and biases on decision making, which may lead to unequal treatment of similar cases.

Treating dissimilar cases differently

The study of the other side of the fairness equation ‘treating different cases differently’ (Bagaric, 2000), has also received considerable attention in the street-level bureaucracy literature (e.g. Hawkins, 1984; Kagan, 1978; Maynard-Moody & Musheno, 2003). Maynard-Moody and Musheno (2003) show how frontline workers are not sole state agents who apply the law and rules mechanically, but are citizen agents who make normative decisions about who is deserving and who is not. That is to say, bureaucrats not only treat cases differently when they are required by law or policies to do so, they decide who is deserving of their scarce time and resources by distinguishing worthy and unworthy citizen-clients. Bureaucrats assign citizen-clients to social identities, which in turn ‘shape the nature of street-level workers’ responses, from bending the rules and providing extraordinary assistance to allowing only begrudging and minimal help and at times abuse’ (Maynard-Moody & Musheno, 2003: 154).

How, then, are differential cases decided upon by street-level bureaucrats? Research on street-level bureaucrats such as social workers and teachers has shown how citizen-clients’ eligibility for a service is determined based on judgments of neediness (Jilke & Tummers, 2018; Maynard-Moody & Musheno, 2003; Stone, 1984). Besides neediness, street-level bureaucrats also assess citizen-clients’ honesty and trustworthiness, to know whether they are trying to scam the system (short-term), and whether they have a motivation to respond to treatment and repay the investment back in the long run (long-term) (Maynard-Moody & Musheno, 2003). Signs of cooperativeness, a motivation to improve or change, or in contrast, a demanding or dependent

attitude all feed into street-level bureaucrats' worthiness evaluations. Thus, cases are differentiated based on evaluations of worthiness, warranting different treatments.

Why do street-level bureaucrats distinguish between worthy and unworthy citizen-clients, beyond what is stated in policies and rules? A first explanation that has been put forward is that street-level bureaucrats have only limited resources. In line with Lipsky's coping approach (1980/2010), bureaucrats have inadequate resources at their disposal and the demand for services expands when the supply increases. To deal with the heavy caseload, bureaucrats develop coping strategies, such as reducing client demand by limiting information or creating waiting lines. Creaming is another coping strategy which involves cherry-picking the easy and less time-consuming citizen-clients (Tummers, Bekkers, Vink & Musheno, 2015). This cherry-picking, thus, involves differentiating between citizen-clients, because not all citizen-clients can get the same kind of help due to limited resources. In the study on school teachers' individual justice beliefs, Kelly (1994) shows how some teachers prefer equal distribution and access for all students, but have to apply other, for them 'second best', principles, due to resource constraints. Instead of following their ideal of equally providing education to all, they used differentiating principles, such as the principle of need or random procedures to determine who has access to a program or another service, and who has not. These examples show how these street-level bureaucrats would prefer to be law abiders, treating everyone similarly, but are forced to make distinctions between citizen-clients because there are not enough resources to distribute.

Another explanation has been put forward by Maynard-Moody and Musheno (2003), who show how judgments of deservingness are a form of identity politics rather than bureaucratic office politics. Street-level bureaucrats make cultural judgments about the moral

character of citizen-clients, not simply because of a shortage of resources to be distributed, but because they themselves are citizens who belong to particular social categories and ‘take their contingent, complex senses of identities into the field and the hallways of their workplaces’ (Maynard-Moody & Musheno, 2003: 21). Street-level bureaucrats’ judgments of citizen-clients’ worthiness are bound up with their own identities, and they do so because they believe it is the right thing to do, even if it put their careers at risk (Maynard-Moody & Musheno, 2003). They draw on their own class, ethnic, racial and gender identities to form bonds with citizen-clients; a finding which is also corroborated by representative bureaucracy literature, which shows how (and when) bureaucrats from underrepresented groups use their discretion to make decisions that reflect their own values, and thereby act in the interest of citizen-clients who share their characteristics (e.g. Akram, 2017; Headly & Wright II, 2020; Sowa & Selden, 2003).

A more fundamental factor that underlies these normative judgments about worthiness is the uncertainty that is inherent in the work of street-level bureaucrats (Frederickson, 2010; Maynard-Moody & Musheno, 2003). Street-level bureaucrats have to navigate ambiguous interactions with citizen-clients, who send vague or conflicting signals and sometimes respond in unexpected ways (Raaphorst, 2018). Moreover, the use of laws and rules in practice is always ambiguous and requires interpretation (Wagenaar, 2004). Street-level bureaucrats, hence, do not simply apply or follow rules, but use them as tools in highly uncertain situations where they need to improvise (Maynard-Moody & Musheno, 2003, 2012; Wagenaar, 2004; Zacka, 2017). Adding to this fundamental uncertainty, is that public implementation policies, such as activation policies in welfare and responsive regulation-inspired policies in regulation, have come to embrace street-level bureaucrats’ professional judgment in decision making. Instead of laws and policies which clearly demarcate who is eligible for service and who is not, street-level bureaucrats are expected to draw on their own professional judgments in decision making

(Bartels, 2013; Brodtkin, 2007; Dubois, 2014; Raaphorst, 2018; van Berkel, 2011). As such, notions in policies are intentionally left vague for street-level bureaucrats to interpret, so they can cater to the specific circumstances they encounter. This means that street-level bureaucrats are not expected to apply a one-size-fits-all approach, but to look at citizen-clients' broader social context to provide tailor-made services and to be responsive to their particular needs or circumstances. This discretion allows street-level bureaucrats to practice 'compensatory inequality to offset other inequalities outside its domain of allocation' (Frederickson, 2010: 57). A teacher, for example, could devote more time to explain teaching materials to a student with learning difficulties, or a social worker could invest more efforts to assist unemployed citizen-clients from lower socioeconomic classes in acquiring a job.

Equal and responsive decision-making: a contradiction in terms?

In the literature on street-level decision making and the role of public values, to treat citizen-clients equally is often seen as being at odds with making decisions that are responsive to citizen-clients' particular circumstances (Frederickson, 2010; Li & Walker, 2020; Zacka 2017). To apply rules uniformly across cases to ensure equal shares, would not do justice to variations in citizen-clients' circumstances or needs (Frederickson, 2010). To illustrate, a teacher who invests the same time and efforts in every student, in order to treat everyone equally, does not take into account variations in need. Zacka (2017) notes how public values often pull in competing directions: 'adhering strictly to standards of fairness may curtail the flexibility that is necessary to be responsive to people's individual needs' (22). As such, the value of responsiveness may be traded off in practice when the uniform application of the law is prioritized. Studies on the impacts of performance management and digital systems on the work of street-level bureaucrats, to illustrate, have shown how street-level bureaucrats are constrained by rules and thereby hampered to use their professional judgment to help citizen-

clients (e.g. Buffat, 2015; Tummers, Bekkers & Steijn, 2009). At the same time, research has suggested that street-level bureaucrats who work in contexts where their discretion is constrained, find ways to help citizen-clients by bending or breaking rules (Maynard-Moody & Musheno, 2003; Thunman et al., 2020).

Conversely, the value of equal treatment may be traded off in practice when responsiveness towards citizen-clients' needs and circumstances is prioritized. Taking into account the circumstances of each case separately, might lead to unaccounted-for differences in decision-making about cases that are to some extent similar (e.g. Raaphorst, 2018). This could happen because involvement in specific cases leads one to see their unique circumstances, making it harder to see the commonalities between cases and to decide what weighs heavier in final decisions. Moreover, when street-level bureaucrats are encouraged to be responsive, and even collaborate or negotiate with citizen-clients, this could make decision making more dependent on social dynamics in encounters, where commitments are made (Raaphorst & Loyens, 2020). The emphasis on responsiveness in decision making, however, does not necessarily imply that street-level bureaucrats value equal treatment less. In fact, research has suggested that street-level bureaucrats could worry about not treating similar cases alike in contexts where there are no clear and guiding rules (Raaphorst, 2018).

Managing equal treatment when the rules run out

If laws and policies intentionally leave room for professional judgment, this raises the question what this implies for equal treatment of similar cases. How are similarities between cases determined when responsiveness to citizen-clients' particular circumstances and needs is also expected? How could variations between different street-level bureaucrats' decisions about similar cases be minimised when they are expected to rely on their own judgments instead of

uniformly applying rules? While research on how street-level bureaucrats value and manage equal treatment in contexts where responsiveness is prioritized is scarce, existing literature offers some suggestions. Possible mechanisms that could explain how equal treatment is managed when the structural constraints are loosened (high-discretion contexts), must hence be found at the micro-level of street-level bureaucrats' decision-making practices.

Research indicates that street-level bureaucrats who have the same job could have various role conceptions which imply distinctive relations with, and views on rules and citizen-clients (e.g. Kagan, 2017; Maynard-Moody & Musheno, 2003). In line with the state-agent narrative (Maynard-Moody & Musheno, 2003), an 'indifferent' street-level bureaucrat would uniformly interpret the rules for every citizen-client equally (Zacka, 2017). Research however indicates that even when street-level bureaucrats value responsiveness, and take into account citizen-clients' specific circumstances, they could still value and pursue equal treatment (Pires, 2011; Raaphorst, 2018; Rutz, Mathew, Robben & de Bont, 2017; Zacka, 2017). That is, while primarily focusing on doing justice by treating different cases differently, street-level bureaucrats not necessarily care less about the equal treatment of similar cases². Their view on how equal treatment could be pursued, however, is different from the uniform application of rules. An in-depth qualitative study shows how a street-level tax official, rather than striving for 'objective' decisions, which are viewed as impossible, attempts to make his decisions 'intersubjective' by consulting colleagues and share interpretations (Raaphorst & Loyens, 2020). To involve other colleagues who may have dealt with similar cases, and ask for their

² Though research points out street-level bureaucrats use stereotypes and discriminate based on client characteristics, this does not necessarily imply that they do not value and pursue equal treatment of similar cases, as the former could also be spurred by factors beyond individual intent, such as implicit biases (e.g. Akram, 2017) or institutionalized practices (e.g. Epp et al., 2014).

interpretations, could make street-level bureaucrats aware of their potential biases, making their final decisions less of a product of only their *own* interpretations.

The value of social consultation practices is also emphasized by scholars who study street-level decision making in teams (Rutz et al., 2017; Piore, 2011; Pires, 2011; Tuijn, van den Bergh, Robben & Janssens, 2014). In these studies it is argued that consistency in decisions and in behaviours of bureaucrats is enhanced by discussing specific cases in groups (Piore, 2011), or even by creating teams which collectively make decisions about specific cases (Pires, 2011; Rutz et al., 2017), without losing the ability to also be flexible and adjust to specific circumstances. While consistency has not been thoroughly conceptualized, it has to do with (increasing the) uniformity of decisions among various street-level bureaucrats, thereby minimizing arbitrariness which comes with potential individual biases. The core mechanism that leads teamwork to enhance consistency is reaching consensus among colleagues who bring along different kinds of knowledge and visions. Consensus may be sought in decision-making contexts involving multiple street-level bureaucrats, where they need to reach consensus about how to interpret and deal with certain real or hypothetical cases (Molander, Grimen & Eriksen, 2012; Pires, 2011; Rutz et al., 2017; Tuijn et al., 2014). This consensus, in the end, could enhance consistency, because more decisions are collectively made by multiple colleagues, or because street-level bureaucrats develop a shared perspective which they could subsequently rely upon in future encounters with citizen-clients.

The development of a shared perspective, and reaching agreement among colleagues does, however, not necessarily enhance equality of treatment. While street-level bureaucrats' decisions could become more alike, thereby minimizing the influence of *individual* biases, they could consistently treat similar cases differently if, for instance, the focus is primarily on

responsiveness and case comparisons are not part of social consultation practices, or if they share the same biases about certain groups in society. Thus, while consistency in decisions of street-level bureaucrats is often mentioned together with equality of treatment, they are different notions, of which the mutual relationships require further empirical research.

The development of new rules has also been found as a strategy to enhance equal treatment in a high-discretion context. Research has shown that in a special team of inspectors that has been set up to be responsive to specific problems pertaining to an identifiable societal group, members collectively developed standardized procedures for inspection which are only applicable to this particular target group (Pires, 2011). In other words, these street-level inspectors developed rules and procedures for a specific segment of their broader client population. Because these rules were only applicable to this target group, street-level bureaucrats could both be responsive to the circumstances of this particular group, and treat everyone equally within. This therefore constitutes a form of ‘segmented equality’ (Frederickson, 2010: 56) which implies equality within segments, but inequality between segments. While the development of new rules which apply to specific target groups may work within teams (or task forces) that are intentionally set up to deal with specific societal groups, this may be less feasible for street-level bureaucrats who serve broader populations and are expected to be responsive to yet unknown circumstances. In fact, in the latter case, the formulation of rules could trade off the flexibility which is needed to be responsive to relevant differences in local circumstances (e.g. Piore, 2011). More research, thus, is needed on how collegial social consultation in various forms – organized in formal teams, or informal meetings – could enhance equal treatment of similar cases when there are no strict rules.

Conclusion and future research agenda

This chapter's aim was to give an overview of how two notions of fairness – treating similar cases alike and treating different cases differently - have been studied in the street-level bureaucracy literature. Research on equality of treatment by street-level bureaucrats mainly focuses on the absence of it, by explaining discrimination based on stereotypes about social class, ethnicity and gender. Research on how street-level bureaucrats distinguish between citizen-clients typically shows how their decisions are informed by normative evaluations about who is deserving and who is not. Highlighting the importance of responsiveness in today's implementation of public policies (e.g. responsive regulation in regulatory agencies, and activation programmes in social welfare policies), this chapter subsequently asked the question how equal treatment, understood here as 'treating similar cases alike', could still be managed by street-level bureaucrats, as responsiveness to particular needs or circumstances is often seen as being at odds with equal treatment of similar cases. In contexts where street-level bureaucrats' discretion is stressed and responsive decision making is encouraged, mechanisms at the micro-meso level of street-level practices, which go beyond the simple application of rules, become more important.

While equality of treatment is often associated with the uniform application of rules, this has become more difficult as street-level bureaucrats are expected to be responsive to citizen-clients' circumstances and needs too. When structural constraints on the behaviour of street-level bureaucrats are loosened, i.e. when laws and rules leave more room for interpretation, it becomes all the more relevant to study how street-level bureaucrats' individual justice beliefs affect their behaviour (e.g. Cowan & Harding, 2020; Hertogh, 2009; Kelly, 1994; Maynard-Moody & Musheno, 2003). More precisely, it is worth inductively studying how

street-level bureaucrats *themselves* define and value equality of treatment. What, for them, needs to be treated similarly and why? How do they determine those similarities? Do they do so *ad hoc*, to be determined for each case separately, or do they fall back on criteria or rules – informal or formal – that they have formulated to deal with uncertainty that comes with professional judgment? Because these street-level bureaucrats cannot easily fall back on existing rules, their reasoning about cases becomes more important (Molander et al., 2012; Zacka, 2017). This could best be grasped by inductive methods, for instance, by eliciting stories about cases where they feel citizen-clients were treated unequally, in an unjustified manner. Participant observation of street-level bureaucrats handling specific cases could be used to study how (if so) these beliefs are brought into practice, and to seek explanations for why they do or do not act in line with their own conceptions, for instance, when other values or practical impediments prevail.

Existing research suggests how street-level decision making in teams could improve consistency in decisions among colleagues, while not losing flexibility to make responsive decisions (Pires, 2011; Rutz et al., 2017). There is however still little insight into how this relates to equal treatment of similar cases. Nevertheless, it is acknowledged that ‘local organizational work cultures that enable conversation about normative judgments among workers, and between workers and their supervisors, promote decisions that are practical for the broader questions of fairness in the delivery of services’ (Maynard-Moody & Musheno, 2012: 22; see also Piore 2011). Instead of directly managing people and their behaviour by means of rules and incentives, supervisors could manage the interpretive processes that underly street-level decisions by participating to those group discussions where specific cases are discussed (Piore, 2011).

More research is needed on whether and, if so, how cases are actually compared to other (previous) cases in peer consultations and teamwork, and how similarities between cases are determined, especially when also responsiveness is encouraged. When street-level bureaucrats with different role conceptions and concomitant views on clients, work in teams to discuss specific cases, it is likely they have different interpretations and make different comparisons between cases (e.g. Zacka, 2017). It is likely that bureaucrats who identify more with the state agent narrative would prefer treating citizen-clients equally as much as possible, while bureaucrats who identify more with the citizen agent narrative would be geared towards assessing similarities between categories of need (e.g. Maynard-Moody & Musheno, 2003). More insight is needed into how consensus within such discussions is reached, also specifically focusing on how is dealt with disagreements and how they are resolved (if so). Subsequently, it may be worth studying what is done when some cases are considered similar; in what contexts are new rules developed that ought to be applied invariably and in what contexts are these similarities used as categories that serve as points for open discussion when new cases arrive?³

The tension between equal treatment on the one hand, and responsive decision making on the other hand is part and parcel of street-level bureaucrats' discretionary decision making (Frederickson, 2010; Zacka 2017). To develop a comprehensive theory on how equal treatment is defined and pursued in contexts where responsiveness is also encouraged, for example, in regulatory agencies implementing responsive regulation principles or social welfare organisations implementing activation policies, more comparative research is needed. A common assumption in street-level bureaucracy literature is that type of task, a meso level

³ Adding to these questions is how those decisions could be justified towards clients or the public. The existence of rules not only reduce uncertainty for bureaucrats, but also for the public who knows what to expect, and can fall back upon them in case they are treated unfairly. In high-discretion contexts, the relevance of epistemic measures to ensure accountability, focusing on the quality of justifications, could become more important (see Molander et al., 2012 for an overview of deliberative and participatory measures).

factor, matters in how bureaucrats relate to the law and citizen-clients. It is argued that law enforcers such as inspectors represent the long arm of the law, who relate to the law and citizen-clients differently than service providers (e.g. de Boer & Eshuis, 2018; Jensen, 2018). Comparing ‘law maintainers’, such as inspectors, with ‘welfare implementers’, such as social workers, allows for examining whether and how type of task matters in the perception and pursuit of equal treatment. By inductively examining whether, and if so, how (the development of) rules are, indeed, more important for ‘law maintainers’ than for ‘welfare implementers’ in how equality of treatment is perceived and pursued, the explanatory value of type of task could be assessed. The type of knowledge street-level bureaucrats are working with, another meso-level factor, could also be relevant in how they determine similarities between cases. How street-level bureaucrats draw on knowledge in their decision-making, more generally, is still underexplored (Cecchini & Harrits, 2019). Explicit, encoded knowledge, such as the body of knowledge medical doctors work with, could be more easily checked and analysed for consistency, than more tacit forms of knowledge social workers work with (e.g. Lam, 2000; Piore, 2011). Inductive, comparative research on how type of knowledge may play a role in how equal treatment is perceived and pursued, could contribute to theory development.

Considerable scholarly attention has been paid to explaining inequality of treatment in street-level bureaucracy contexts, by specifically focusing on discrimination and stereotyping by street-level bureaucrats. Whereas this branch of research has provided valuable insights, there is less insight into what explains *equality of treatment*. This is an important way forward since equal treatment is more than the absence of discrimination based on citizen-client characteristics such as ethnicity or social class. It also has to do with assessing similarities in citizen-client’ specific circumstances, such as needs and efforts. Hence, eliminating the factors that reinforce street-level discrimination of clients based on their gender, ethnicity or social

class, not necessarily implies the equal treatment of clients in comparable situations, e.g. with similar needs. Moreover, the pursuit of equal treatment could also go beyond the application of rules as is often assumed in the literature. Going back to story of Tom at the start of this chapter; he is expected to make responsive decisions based on his professional judgment, and hence to not uniformly apply rules. By examining how street-level bureaucrats, who work in contexts like Tom, define and value equal treatment, and subsequently, pursue equal treatment *socially* (by means of peer consultation) and *through time* (by means of comparing cases to previous cases), more insight could be gained in how equal treatment is managed beyond adherence to rules.

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