

Administering “Welfare Rights”: “Fair Hearings” in Public Assistance in the 1940s

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Abstract:

In one of its oft forgotten provisions, the Social Security Act of 1935 required, as a condition of federal support for public assistance programs, that States not deny any public assistance claimant the right to a fair hearing before the state administrative agency. This paper is about a group of a New Deal lawyers who, acting in their capacity as general counsel to the Social Security Administration, championed the “fair hearing” requirement. Both in reviewing State public assistance plans and in corresponding with State agencies about the administration of their plans, these lawyers consistently demanded greater attention to administrative appeals, more detailed regulations for such appeals, and stronger protections for the claimant’s “fair hearing” rights.

The lawyers, I argue, were not motivated by a conservative desire to “judicialize” the agencies – indeed, they decried overly formal hearing procedures and urged courts to respect agency discretion. Rather, they hoped that vigorous enforcement of the “fair hearing” requirement would discipline state and local public welfare administrators, who were accustomed to doling out public assistance in a “lawless” and unscientific fashion. They also hoped that when compelled to provide for “fair hearings” (a.k.a., “due process”), public welfare administrators would begin to see public assistance as an individual right, as opposed to a charity or gratuity. The “fair hearing” story is thus part of a larger story about how certain New Deal administrators (along with their allies in social work) attempted to place public assistance on the same firm footing as social insurance. It also helps explain why, some three decades later, the “fair hearing” was both the quintessential welfare right and one of the primary vehicles for the welfare rights movement.