



Procedural Fairness

FOR JUDGES AND COURTS

Recent Research on Procedural Fairness: A Quarterly Report

Spring 2014

This publication highlights the most notable procedural fairness scholarship released over the past quarter by topic. Each quarterly issue will also include a listing of other articles that are of particular relevance to procedural fairness and the courts. Recent news and events complete the report. Articles available via open source are denoted by a double asterisk.

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Theory and Research – Public Opinion

Ben Bradford and Andy Myhill, *Triggers of Change to Public Confidence in the Police and Criminal Justice System: Findings from the Crime Survey for England and Wales Panel Experiment*, *CRIMINOLOGY & CRIM. JUST.* (forthcoming 2014).

Accounts of public ‘trust and confidence’ in criminal justice agencies often fall into one of two camps. Instrumental accounts suggest that people trust police and the criminal justice system (CJS) when they believe them to be effective in fighting crime and reducing offending. Expressive or affective accounts, by contrast, suggest people place as much or more emphasis on the social meaning of justice institutions as on their instrumental activities. In this article we add to recent studies that have sought to weigh up the balance between instrumental and expressive factors. Using data from the Crime Survey for England and Wales panel experiment, we present evidence that trust in police and the wider CJS is implicated in public concerns about the nature of local order and cohesion. The expressive account appears to offer a better understanding of why people may grant trust to, or withdraw trust from, the police and the CJS.

Mike Hough, Jonathan Jackson & Ben Bradford, *The Governance of Criminal Justice, Legitimacy and Trust*, in *EUROPEAN HANDBOOK OF CRIMINOLOGY* (S. Body-Gendrot, M. Hough, R. Levy, K. Kerezsi & S. Snacken, eds., 2013).

This chapter presents findings on public trust in justice drawn from the fifth European Social Survey, carried out in 28 countries in 2010/11. The dataset used here covers 26 of the 28 countries, and has a total sample size of almost 51,000 people. The analysis is thus on a large scale, and serves as an exemplar of a particular approach to comparative research, involving empirical testing of a theoretical model. We and colleagues designed the module on trust to test an elaborated version of Tyler’s (Tyler 2006; Tyler and Huo 2002) procedural justice theory, which posits that fair treatment by police and other justice officials yields public trust in justice, which in turn consolidates the legitimacy of institutions of justice, and thus public cooperation and compliance with the law. To anticipate our conclusions, we find good support across a variety of European countries on the links between trust in the police and people’s perceptions of the legitimacy of the police.

Avital Mentovich, Eunho Rhee & Tom R. Tyler, *My Life for a Voice: The Influence of Voice on Health-Care Decisions*, *27 SOC. JUST. RES.* 99 (2014).

Are people willing to give up affordable healthcare and future years of their lives in exchange for having a voice in healthcare decision-making? Drawing upon research on the psychology of justice, we claim that the fairness of healthcare decision-making procedures,



expressed by the availability of voice, can be more important than critical health-related outcomes. We examined this proposition using a forced-choice paradigm that required participants to choose between voice and better healthcare outcomes (affordable healthcare and greater life expectancy). Findings from three studies revealed that people maintain a strong preference for voice even at the expense of tangible healthcare outcomes. In study 1, participants preferred a healthcare plan that offered them a voice when it was \$3,000–\$12,000 more costly than a plan that did not offer such voice privileges. In study 2, participants preferred a voice plan to a no-voice plan when the no-voice plan was 5–20 years greater in its average life expectancy compared with the voice plan. In study 3, which used a more demographically diverse, non-student sample, the preference for the voice plan persisted across all conditions, even when the no-voice plan was 25 years greater in its life expectancy, and even when participants' expected to personally live longer under the no-voice plan. These results are explained by participants' expectation to enjoy better personal healthcare outcomes and greater autonomy when afforded voice. These findings demonstrate the importance of voice in hypothetical decision-making relevant to policy-making.

Policing

****Ben Bradford, K. Murphy & Jonathan Jackson, *Officers as Mirrors: Policing, Procedural Justice and the (Re)production of Social Identity*, BRIT. J. CRIMINOLOGY (forthcoming 2014).**

People's encounters with the criminal justice system can powerfully shape both their sense of self and their sense of belonging. In this paper we focus on the effect experiences of policing may have on people's identities. A representative panel survey of Australians provides the most convincing evidence yet that social identity (here, identifying oneself as a 'law-abiding Australian') is an important mechanism linking procedural justice to police legitimacy. When people feel fairly treated, their sense of identification with the group the police represent seems to be enhanced, strengthening police legitimacy as a result; but unfair treatment, which indicates to people that they do not belong, may undermine such identification and damage police legitimacy.

Ben Bradford, *Policing and Social Identity: Procedural Justice, Inclusion and Cooperation Between Police and Public*, 24 POLICING AND SOC'Y 22 (2014).

Accounts of the social meaning of policing and of the relationship between police and citizen converge on the idea that police behaviour carries important identity-relevant information. Opinions of and ideas about the police are implicated in the formation of social identities that



relate to the social groups it represents – nation, state and community. Procedural justice theory suggests that judgements about the fairness of the police will be the most important factor in such processes. Fairness promotes a sense of inclusion and value, while unfairness communicates denigration and exclusion. Furthermore, positive social identities in relation to the police should on this account promote cooperation with it. This article presents an empirical test of these ideas in the context of the British policing. Data from a survey of young Londoners are used to show that perceptions of police fairness are indeed associated with social identity, and in turn social identity can be linked to cooperation. Yet these relationships were much stronger among those with multiple national identities. Police behaviour appeared more identity relevant for people who felt that they were citizens of a non-UK country, but for those who identified only as British there was a weaker link between procedural fairness and social identity, and here legitimacy judgements were the main ‘drivers’ of cooperation. Theoretical and policy implications are discussed.

Ben Bradford, Paul Quinton, Andy Myhill & Gillian Porter, *Why Do "The Law" Comply? Procedural Justice, Group Identification and Officer Motivation in Police Organizations*, 11 EUR. J. CRIMINOLOGY (2014).

How can police officers be encouraged to commit to changing organizational and personal practice? In this paper we test organizational justice theories that suggest that fair processes and procedures enhance rule compliance and commitment to the organization and its goals. We pay particular attention to (a) tensions between the role of group identity in organizational justice models and classic concerns about ‘cop culture’; and (b) the danger of *over-identification* with the organization and the counterproductive types of compliance this may engender. Results suggest that organizational justice enhances identification with the police organization, encourages officers to take on new roles, increases positive views of community policing, and is associated with greater self-reported compliance. Identification with the organization has generally positive implications; however, there is some danger that process fairness may encourage unthinking compliance with orders and instructions.

Other Noteworthy Articles

**Susanne Beier, Constanze Eib, Verena Oehmann, Peter Fiedler & Klaus Fiedler, *Influence of Judges' Behaviors on Perceived Procedural Justice*, 44 J. APPLIED SOC. PSYCH. 46 (2014).

This article discusses the influence of judges’ behaviors on procedural justice based on behavioral analyzed during a field study. The article concludes that although the judges’



observed behavior was unrelated to the defendants' justice perceptions, it was related to the perceptions of the audience.

****Jacqueline M. Nolan-Haley & James Kwasi Annor-Ohene, *Procedural Justice Beyond Borders: Mediation in Ghana*, HARV. NEGOT. L. REV., March 12, 2014.**

This article reports on a preliminary procedural justice study conducted in Ghana during 2013. The findings suggest that the common characteristics of procedural justice in Ghana are consistent with the findings on procedural justice in western countries.

Anjuli Van Damme, Lieven Pauwels & Robert Svensson, *Why Do Swedes Cooperate with the Police? A SEM Analysis of Tyler's Procedural Justice Model*, EUR. J. CRIM. POL'Y AND RES. (2013).

The article uses structural equation modeling (SEM) and data from the European Social Survey to analyze why citizens cooperate with the police. The results indicate that trust in the procedural justice of the police plays an important role in the explanation of citizens' willingness to cooperate with the police.

Gissur Ó. Erlingsson, Jonas Linde & Richard Öhrvall, *Not So Fair After All? Perceptions of Procedural Fairness and Satisfaction with Democracy in the Nordic Welfare States*, 37 INT'L J. PUB. ADMIN. 106 (2014).

The Nordic countries are known for their well-functioning public administrations. However, using individual level data to examine procedural fairness, the authors find that that widespread public perceptions about the unfairness of civil servants may have a negative effect on the legitimacy of the political system even in so-called high-trust and "least corrupt" settings such as the Nordic ones.

In the News and On the Web

Pat Lynch, *The Power of Procedural Fairness*, PUBLIC SAFETY INSIGHTS NEWSLETTER, January 29, 2014, <http://publicsafetyinsights.net/public-safety-insights-newsletter-january-29-2014/>.

Nancy Smith, *Procedural Fairness: Using Blended Learning to Extend the Reach*, NAT'L ASS'N ST. JUD. EDUCATORS, April 14, 2013, <http://news.nasje.org/2013/04/14/procedural-fairness-using-blended-learning-to-extend-the-reach/>.



Recent/Upcoming Events

The Law and Society Association Conference will take place from May 29, 2014 to June 1, 2014 in Minneapolis, MN. The Conference will include four sessions on procedural fairness:

Session 1: Procedural Justice in Context: Examining Procedural Justice, Procedural Preferences, and Tradeoffs Across Different Cases, Decision-Makers, and Dispute Resolution Procedures

Session 2: Judicial Communication

Session 3: Judges, Lawyers and Clients Examine the Value of Assessing the Procedural Justice of Judicial Settlement Sessions

Session 4: Mandatory Arbitration Agreements: Promoting Efficiency or Exploiting Inequality?