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Recent Research on Procedural Fairness: A Quarterly Report

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This publication highlights 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 relevance to the application of procedural fairness the courts. Recent news and events, if available, complete the report. Articles available via open source are denoted by a double asterisk.

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General Research

Vicky De Mesmaecker, *PERCEPTIONS OF CRIMINAL JUSTICE (2014)* (Book available for purchase from online retailers).

From the book description: In recent decades, research into the legitimacy of criminal justice has convincingly demonstrated the importance of procedural justice to citizens' sense of trust and confidence in legal authorities and their resulting willingness to conform to the law and cooperate with the legal authorities. Reversing the age-old question 'why do people break the law?', theories of procedural justice have provided insight into the factors that encourage people to abide by the law, suggesting that experiences of procedural fairness are crucial to achieving compliance with the law and to enhancing the legitimacy of criminal justice. While these studies are important in showing that legal authorities need to pay attention to the fairness judgments of the people involved in legal procedures, the focus on showing the importance of procedural justice has had the ironic consequence of distracting researchers from studying the equally important question of what fairness means to the people involved in legal proceedings.

In one of the first studies on procedural justice to use a qualitative research design, the author provides the reader with detailed and insightful descriptions of the elements that determine how victims and defendants assess the fairness of their contact with the police and the courts. Focusing on both the pre-trial and the post-trial phases, this book will be of interest to academics and students engaged in the study of the psychology of law, procedural justice and the legitimacy of criminal justice.

**** Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F. 525 (2014).**

In her recent concurring opinion in *United States v. Jones*, Justice Sotomayor addressed the question of what a lawful search means within the context of the Fourth Amendment. At issue in *Jones* was whether the government's use of an electronic tracking device attached to the undercarriage of a Jeep Grand Cherokee beyond the ten days authorized by a warrant violated the Fourth Amendment. As she discussed the problems inherent to discretionary governmental decisions to target and track individuals, Justice Sotomayor framed her response not only as a question of physical trespass under the Fourth Amendment, which was the focus of Justice Scalia's opinion for the Court, but also in terms of the impact of government actions on the "relationship between citizen and government in a way that is inimical to democratic society."

Justice Sotomayor further developed this theme of avoiding distrust and alienation and



instead focusing on how to further a desirable relationship between people, law, and government in her recent James A. Thomas Lecture, delivered at Yale Law School on February 3, 2014. In that lecture, the Justice argued that the goal of the law is to express our shared ideals as a society—and, through doing that, to enable everyone to identify with law and with our democracy and its political and legal institutions.

There are different methods of constitutional interpretation: originalism, textualism, purposivism, and so on. We think Justice Sotomayor's initial opinions reflect a jurisprudence of process that emphasizes making decisions fairly.

Compliance and Cooperation

Courts

**** [Robyn L Holder, *Satisfied? Exploring Victims' Justice Judgements*, \(Regulatory Institutions Network, Working Paper No. 2014/28, 2014\).](#)**

Across common law countries, victims of crime and victim advocates have made trenchant and sustained critique of criminal justice systems. Running deep in the debate has been the claim that justice itself is absent. In response, legislators and administrators have initiated various reforms from services to ‘rights’ charters. In examining victims’ experiences with and assessments of reforms, both policy makers and researchers have tended to rely on ‘satisfaction’ as a measure. While useful for policy purposes, satisfaction may hide more than it reveals about the expectations and interests of people who are victims of crime. Instead, this chapter argues for closer engagement with ideas of justice. It does so through the narratives and survey responses of a group of men and women who became involved in the criminal justice system in a large regional city in Australia following an incident of violence against them. Interviews with people on three occasions identified a conception of justice that was a dynamic integration comprising substantive and procedural elements. Moreover, this conception drew on core values associated with the public role of the criminal justice system, especially those of fairness, equality and respect. Conceiving of victims as clients or consumers of justice ‘services’ through the lens of satisfaction fails to recognize the normative power of justice as an inclusive ideal as well as its political potency in communal governance.



Specialized Courts

Kelli E. Canada & Virginia Aldige Hiday, *Procedural Justice in Mental Health Court: An Investigation of the Relation of Perception of Procedural Justice to Non-Adherence and Termination*, 25 J. FORENSIC PSYCHIATRY & PSYCH. 321 (2014).

Mental health courts (MHCs) operate on the principles of procedural justice (PJ). PJ highlights the importance of process over outcomes in encounters with authority. Subjective perceptions of having voice, being heard by decision-makers, and being treated with respect and concern by figures of authority are influential in assessment of fairness and in cooperation with decisions, regardless of favorability of the outcome. In this paper, we investigate MHC participant perception of PJ in interactions with MHC staff and the association between perceptions and recidivism (i.e. time in jail, new arrests, and probation violations), treatment adherence, and MHC termination. Participants from two MHC programs ($n = 80$) took part in this study. Results suggest that perception of PJ during interactions with the entire MHC team is significantly associated with program termination, but not with participant behaviors during MHC. Implications for MHC practitioners and researchers are discussed.

Myesa Knox Mahoney, *Procedural Justice and the Judge-Probationer Relationship in a Co-Occurring Disorders Court*, 37 INT'L J. L. & PSYCHIATRY 260 (2014).

Although a considerable amount of research has been conducted on treatment-based courts, there is little quantitative evidence that describes the relationship between the judge and the probationer. The present study examines perceptions of the judge-probationer relationship (JPR), procedural justice, and outcome satisfaction within a co-occurring disorders court (CODC) in Orange County, California. Based on interview and survey data from a sample of probationers within the CODC ($n=24$), this article argues that perceptions of procedural justice are linked to perceptions of relationship quality between the judge and probationer. Analysis of the data found that probationers in the CODC have very positive views of their relationships with the judge, and elements of relationship quality are significantly linked with perceptions of procedural justice. Procedural justice is also a predictor of satisfaction with outcome in this sample. The results show promise that procedural justice and the quality of the judge-probationer relationship can positively affect probationers with co-occurring disorders in specialty courts.



Lisa K. Askinazi, *Evaluating Procedural Justice Criteria for Parents Who Settle Child Custody Matters Pre-Trial: A Case Study*, (unpublished Ph.D. dissertation, Adelphi University).

By gathering interview data from parents, attorneys, judges and their law secretaries, this study examined the extent to which the manner in which child custody disputes are settled in the civil court system provides a fair venue for parents. It further examined the specific factors noted by Lind and Taylor (1988) that contribute to a fair legal procedure. These factors include voice opportunity, respect, neutrality, and trust. An explanatory case study design was used and the data was analyzed using pattern matching (Yin, 2009). Findings suggest that Lind and Taylor's group value model of procedural justice provides an important lens to understand the impact of pre-trial practices on parents related to child custody. The findings also suggest that time and cost (which fall outside of Lind and Taylor's model) influence people's perceptions of procedural justice.

Policing

** Jonathan Jackson, Muhammad Asif, Ben Bradford & Muhammad Zakria Zakar, *Corruption and Police Legitimacy in Lahore, Pakistan, Working Paper* (April 6, 2014).

Police legitimacy is an important topic of criminological research, yet it has received only sporadic study in societies where there is widespread police corruption, where the position of the police is less secure, and where social order is more tenuous. Drawing on data from a probability sample survey of adults in Lahore, Pakistan, we examine the empirical links between the experience of police corruption, perceptions of the fairness and effectiveness of the police, and beliefs about the legitimacy of the police. In a context in which minimal effectiveness and integrity is still to be established, we find that police legitimacy rests not just on procedural justice but also the demonstrated ability to control crime and act ethically.

Jacinta M. Gau, *Procedural Justice, Police Legitimacy, and Legal Cynicism: A Test for Mediation Effects*, POLICE PRAC. & RES. (forthcoming 2014).

The procedural justice theory of police legitimacy has yet to fully consider the potential impacts of legal cynicism. The present study tests the hypothesis that cynicism mediates the justice–legitimacy relationship. Results of structural equation models support partial mediation. Procedural justice significantly reduced cynicism, while declines in cynicism promoted legitimacy. Cynicism should be incorporated into the theory of procedural justice and related empirical tests. Implications for police policy include the important role that



process-based fairness plays in helping promote positive attitudes not merely toward police but toward society in general.

Lorraine Mazerolle, Elise Sargent, Adrian Cherney, Sarah Bennett, Kristina Murphy, Emma Antrobus, and Peter Martin, *Procedural Justice and Legitimacy in Policing*, SPRINGER BRIEFS IN CRIMINOLOGY (2014).

This brief focuses on the “doing” of procedural justice: what the police can do to implement the principles of procedural justice, and how their actions can improve citizen perceptions of police legitimacy. Drawing on research from Australia (Mazerolle et al), the UK (Stanko, Bradford, Jackson et al), the US (Tyler, Reisig, Weisburd), Israel (Jonathon-Zamir et al), Trinidad & Tobago (Kochel et al) and Ghana (Tankebe), the authors examine the practical ways that the police can approach engagement with citizens across a range of different types of interventions to embrace the principles of procedural justice, including problem-oriented policing, patrol, restorative justice, reassurance policing, and community policing. Through these examples, the authors also examine some of the barriers for implementing procedurally just ways of interacting with citizens, and offer practical suggestions for reform. This work will be of interest for researchers in criminology and criminal justice focused on policing as well as policymakers.

Kristina Murphy & Julie Barkworth, *Victim Willingness to Report Crime to Police: Does Procedural Justice or Outcome Matter Most?* 9 VICTIMS & OFFENDERS 178 (2014).

Research has shown that procedural justice is an important predictor of victims’ satisfaction with the criminal justice system. What remains relatively unclear, however, is whether procedural justice is more important to victims than other instrumental factors, such as the outcome favorability of their encounters with police. Some studies find that victims are more satisfied with the criminal justice system when they have received a favorable outcome, while others show that procedural justice elements dominate their concerns. To date, only three studies have investigated this issue in the context of victims’ willingness to cooperate with the police. Again, however, the results have been inconclusive. The present study utilizes survey data collected from a representative sample of 1,204 Australians to show that the effect of procedural justice on victims’ willingness to report crime to police is context specific. For some victim types, procedural justice is more important, while for other victim types, instrumental factors dominate their decision to report crime.



Miscellaneous

**** John Angus, D. Hidreth, Don A. Moore & Steven L. Blader, *Revisiting the Instrumentality of Voice: Having Voice in the Process Makes People Think They Will Get What They Want*, 27 SOC. JUST. RES. 209 (2014).**

Research on procedural justice has found that processes that allow people voice (i.e., input) are perceived as fairer, and thus elicit more positive reactions, than processes that do not allow people voice. Original theorizing attributed these effects to beliefs that the provision of voice enhances people's sense of process control, which people were assumed to value because it impacts their perceived likelihood of receiving desired outcomes (the instrumental perspective of procedural justice). Subsequent research questioned this perspective, arguing that outcome expectations do not account for the effects of voice. However, this subsequent research failed to directly examine the interplay of voice, outcome expectations, and reactions. The current studies revisit and extend research on this topic by asking whether manipulations of voice act as *shared circumstance effects*. Confirming an untested implication of the instrumental perspective, we show that giving everyone voice increases their belief, *ex-ante*, that they are likely to win an upcoming competition. However, this instrumental belief accounts for only part of the effects of voice on perceived procedural fairness and on general reactions to outcomes. Results suggest that voice does indeed have instrumental significance, an implication not adequately recognized in current justice theorizing. However, this instrumentality does not, by itself, explain why people value having a voice in processes that affect them.

Deborah A. Goldfarb, *Shaping Perceptions of Justice: A Familial Model of Procedural Justice*, 82 UMKC L. REV. 465 (2014).

Where and how we determine that the law is procedurally just and fair in the delivery of legal services is a developmental question of interest to researchers and policy makers. Many laws assume a familial model of procedural justice whereby family members share views of procedural justice and share benefits from procedurally just experiences. However, the contours of the relationship between familial and individual views of procedural justice, such as the strength of the relationship and what factors affect the relationship, are still unclear. This article analyzes research potentially supporting a familial model of procedural justice and advocates for further research into such a model.



Michel Tremblay & Pascale-Edith Landreville, *Information Sharing and Citizenship Behaviors: Mediating the Roles of Empowerment, Procedural Justice, and Perceived Organization Support*, 51 INT'L J. BUS. COMM. (forthcoming 2014).

This study aims to evaluate the mediating roles of empowerment, procedural justice, and organizational support in the influence of top-down and bottom-up information sharing on citizenship behaviors. In line with our hypotheses, we found that top-down practices primarily reinforce a sense of empowerment, whereas bottom-up practices primarily reinforce the perception of procedural justice. Finally, we found that information-sharing practices significantly influence citizenship performance in all three exchange mechanisms studied.

Tinneke Van Camp, *VICTIMS OF VIOLENCE AND RESTORATIVE PRACTICES: FINDING A VOICE* (2014) (Book available for purchase from online retailer).

Although there is no consensual definition of restorative justice, it is generally accepted that restorative interventions also centre on the active involvement of the parties affected by a crime. Restorative practices might then serve to illustrate the procedural justice model. In turn, procedural justice can serve as a theoretical framework for restorative justice and offer guidelines for good practices. The overall aim of the study presented in this book is to move beyond the empirical observation of victim satisfaction with restorative justice and instead provide an explanation.

** Karin Beijersbergen, *Procedural Justice in Prison: A Study on Determinants and Consequences of a Procedurally Just Treatment of Prisoners*, (June 2014) (unpublished Ph.D. dissertation, Vrije Universiteit Amsterdam).

This thesis focuses on procedural justice in the correctional setting. In this thesis, procedural justice includes prisoners' perceptions of (1) the fairness of procedural in prison (e.g. rules being applied in a neutral and consistent way), (2) the interpersonal treatment within prison (e.g. being treated with respect and humanity), and (3) positive and constructive officer-prisoner relationships. The aim of this thesis is two-fold. First, to investigate to what extent contextual factors within prison (i.e. correctional officer composition and prison architecture) contribute to a procedurally just treatment of prisoners. Second, to examine to what extent a procedurally just treatment of prisoners affects prisoners' adjustment (i.e. misconduct and mental health problems).



In the News/On the Web

Tracey Meares, *How Procedural Justice Strengthens the Public's Willingness to Obey the Law*, New Thinking Podcast (June 2014).

In this New Thinking podcast, Tracey L. Meares, the Walton Hale Hamilton Professor at Yale Law School, outlines the four components of procedural justice and their power to enhance perceptions of government legitimacy. She also discusses how procedural justice is incorporated into Chicago Offender Notification Forums, an anti-violence intervention that she helped design.