

Procedural Justice and the Courts

Tom R. Tyler

People come to the courts about a wide variety of problems and disputes. Although this has always been the case, in recent years the court system has become the branch of government in which people deal with an ever broader variety of issues and concerns. And the people who bring their problems to court have themselves become increasingly diverse in terms of their ethnic and social backgrounds. In addition, more and more of these people choose to represent themselves, rather than acting through lawyers. Finally, these changes are occurring in an environment in which people have generally lower levels of trust and confidence in all forms of governmental authority. All of these trends pose a challenge for the courts.

In dealing with these problems and disputes, one core goal of the judicial system is to provide people with a forum in which they can obtain justice as it is defined by the framework of the law. This is the traditional concern of judges, and the goal emphasized in legal education—the correct application of the law to particular legal disputes.

A second goal of the courts is to handle people's problems in ways that lead them to accept and be willing to abide by the decisions made by the courts. The effectiveness of the courts in managing social conflicts depends upon their ability to issue decisions that are authoritative, i.e., that shape the conduct of the parties that come before them. Courts want that deference to continue over time, with people adhering to court judgments long after their case, so that the parties are not continually bringing the issues back into the courts for re-litigation. Finally, the courts want to retain and even enhance public trust and confidence in the courts, judges, and the law. Such public trust is the key to maintaining the legitimacy of the legal system.

THE IDEA OF PROCEDURAL JUSTICE

The concepts behind procedural justice have developed from research showing that the manner in which disputes are handled by the courts has an important influence upon people's evaluations of their experiences in the court system.¹ The key finding of that research is that how people and their problems are managed when they are dealing with the courts has more influence than the outcome of their case on the issues noted above. Judgments about how cases are handled are generally referred to as assessments of procedural justice to dis-

tinguish them from assessments of the favorability or the fairness of the outcomes that people received. Studies suggest first that procedural justice has an impact on whether people accept and abide by the decisions made by the courts, both immediately and over time. Second, procedural justice influences how people evaluate the judges and other court personnel they deal with, as well as the court system and the law.

Problems with noncompliance with the decisions of judges are long-standing.

One major motivation for the alternative dispute resolution movement, which seeks alternative forums to traditional courtrooms, is the effort to find a way to increase the willingness to accept the decisions made by third-party authorities. In family court, for example, judges have struggled to find ways to make decisions about child custody and child support that would be willingly followed by both fathers and mothers and that would, to the degree possible, create positive post-separation dynamics in which both parents took responsibility for supporting their children financially and emotionally. And, procedural justice is found to be effective in both creating positive dynamics within families and in facilitating long-term adherence to agreements.² In other words, the use of fair procedures encourages a positive climate among the parties, which is more likely to promote both a long-term relationship and adherence to the agreements made about how to handle issues, such as child custody, that are related to that relationship.

MISCONCEPTIONS ABOUT PROCEDURAL JUSTICE

Before discussing the implications of the procedural justice approach, let me comment on a common misconception about this perspective. That is that it suggests that people are happy when they lose. On the contrary, no one likes to lose. However, people recognize that they cannot always win when they have conflicts with others. They accept "losing" more willingly if the court procedures used to handle their case are fair. This is true both for formal procedures such as trials and for informal procedures, including settlement conferences, mediation sessions, and arbitration hearings.

One reason the procedural justice approach results in "losing" being more acceptable to litigants is that it minimizes the degree to which problems are framed in terms of winning and losing, as well as generally shifting the focus of attention away

Footnotes

1. E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988); Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117 (2000).
2. PENELOPE E. BRYAN, *CONSTRUCTIVE DIVORCE: PROCEDURAL JUSTICE AND SOCIOLEGAL REFORM* (2005); Peter A. Dillon & Robert E. Emery, *Divorce Mediation and Resolution of Child Custody Disputes: Long-term Effects*, 66 AM. J. ORTHOPSYCHIATRY 131 (1996); Robert

E. Emery, Sheila G. Matthews & Katherine M. Kitzmann, *Child Custody Mediation and Litigation: Parents' Satisfaction and Functioning One Year After Settlement*, 62 J. CONSULTING & CLINICAL PSYCHOL. 124 (1994); Katherine M. Kitzmann & Robert E. Emery, *Procedural Justice and Parents' Satisfaction in a Field Study of Child Custody Dispute Resolution*, 17 LAW & HUM. BEHAV. 553 (1993).

from outcomes and toward the procedures through which the dispute is being resolved. As a consequence, fair procedures lead to a concern about delivering gains to all parties rather than winning over others.³ For example, all parties have the opportunity to present their story and to have it considered by the relevant authorities. Further, all parties have their right to seek justice from the courts, recognized and acknowledged by the courts.

Because it provides all parties with desirable experiences with the courts, procedural justice is a key to the development of stable and lasting solutions to conflicts. The beginning point of such solutions is a better and generally less conflictual relationship among the parties to a case. When people have settled their conflict in a less adversarial way, they have better feelings toward one another. For example, as previously noted, in child custody hearings both parents are likely to be involved in their children's lives a year or even several years after the hearing if they view the hearing as fair. And this is true irrespective of the outcome. Fathers, who typically lose such hearings, are more likely to have contact with their children in the future if the hearing is one they evaluate as being fair. In addition, having a fair hearing encourages people to view the authority involved and their decision as more legitimate. Consequently, people feel more obligation to accept and obey the decision. This leads to long-term rule following.

One example of this long-term effect is provided by a study of adult rule following conducted in Australia. Adults who were arrested for driving while drunk had their case disposed through different legal procedures, including traditional courts. After their case was disposed each person was interviewed. As expected, the fairness of the legal procedure was related to the legitimacy of the legal system. Two years later, those involved were reinterviewed and it was found their views about the legitimacy of the law were related to their initial perceptions of the fairness of their cases. Peoples' obedience to the law was then tracked for the two years following this second interview, and it was found that people who experienced their hearing as fairer, and therefore viewed the law as more legitimate two years later, reoffended at around 25% the rate of those who viewed the law as less legitimate during the two years following their second interview. In other words, the reduction in reoffending caused by experiencing a hearing as fairer extended to at least four years after the hearing.⁴ It is striking that people's experiences in a courtroom or at a conference with legal authorities, something that lasts at best a few hours, can be strongly affecting their behavior several years later.

THE INFLUENCE OF PROCEDURAL JUSTICE

As the findings outlined suggest, judges and court personnel should be interested in procedural justice because studies indi-

TABLE 1. THE INFLUENCE OF PROCEDURAL JUSTICE

	Willingness to accept the decision	Evaluation of the courts and the law
Experience-based judgements		
Procedural justice	.68***	.36***
Distributive justice	.20**	.15 [^]
Outcome favorability	-.11*	-.11
Background factors		
Ideology	.08	.07
Age	-.06	.02
Education	-.12	.05
Income	.13*	.07
Gender	.02	.00
African-American	-.03	-.17 [^]
Hispanic	-.10	.07
City of residence	-.06	.04
Was contact voluntary?	-.04	.02
Adjusted R²	58%***	21%***
^p < .10; *p < .05; **p < .01; ***p < .001.		

cate that it encourages decision acceptance and leads to positive views about the legal system. A particularly telling example comes from a study of willingness to accept decisions made by police officers and judges in two California communities—Oakland and Los Angeles.⁵ This study considered both those who came to these authorities seeking help, and those being regulated by the authorities. It also considered a diverse sample of White, African-American, and Hispanic residents. The sample included 1,656 people in Los Angeles and Oakland with a recent personal experience with the police or the courts. Fourteen percent (239 people) had contact with a court.

Why did people accept court decisions? The study asked participants about their willingness to accept such decisions. In particular, it focused upon willing acceptance, rather than mere compliance. It also asked about overall evaluations of the law, the courts, and the legal system.

Reactions to the court could potentially be linked to three judgments: whether the procedures used by the court were just; whether the outcome was just; and/or whether the outcome was favorable or unfavorable. In addition, the study measured and controlled for other potentially important factors, including the person's ideology, their age, their level of

3. Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 LAW & SOC. INQUIRY 473 (2008).
 4. Tom R. Tyler et al., *Reintegrative Shaming, Procedural Justice, and Recidivism: The Engagement of Offenders' Psychological Mechanisms*

in the Canberra RISE Drinking-and-Driving Experiment, 41 LAW & SOC'Y REV. 553 (2007).

5. TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (2002).

[F]ocusing on procedural justice is a very good way to build trust and encourage compliance irrespective of who the people using the courts are.

education, their income, their gender, the city they lived in, their ethnicity (African-American, Hispanic, white); and whether they appeared in court voluntarily.

Regression analysis was used to explore the influence of these various factors on the willingness to accept decisions made by the court. The results of that analysis are shown in Table 1. The numbers shown are standardized

regression coefficients, which indicate the relative influence of different factors. As expected, the primary factor shaping the willingness to accept decisions was the fairness of court procedures (standardized regression coefficient, $r = .68$, $p < .001$). Procedural justice was also the primary factor shaping the influence of personal experience upon overall views about the court system (standardized regression coefficient, $r = .36$, $p < .001$).

The findings noted above are especially important because they are true of people irrespective of their social or economic background. The California study was designed to compare the experiences of white, Hispanic, and African-American members of Los Angeles and Oakland. The members of all three groups reacted in basically the same ways to their experiences. The same is true of those who were economically advantaged and disadvantaged, men and women, and those high and low in education. It was also true of plaintiffs and defendants, and of people who dealt with the police or the courts. In other words, people generally reacted to their experience in terms of procedural justice whatever their background, suggesting that focusing on procedural justice is a very good way to build trust and encourage compliance irrespective of who the people using the courts are.

These findings are typical of studies of the courts. Early experimental research on trials by John Thibaut (a psychologist) and Laurens Walker (a lawyer) demonstrated that, irrespective of the outcome of a trial, the participants were more willing to accept the decisions of the judge if the trial procedure was fair.⁶ In particular, they argued that disputants viewed adversary procedures as fair because they allowed people the opportunity to tell their side of the story before decisions were made by the authority managing the trial. Such an

opportunity is often described as having voice in the proceedings. This early experimental research has been subsequently supported by a number of laboratory and field studies of trials and other legal procedures.⁷ At this point the influence of procedural justice is widely supported by both experimental and field research.

As I have noted, an especially important finding of studies on procedural justice is that people are more likely to continue to abide by a decision if that decision is made through a fair procedure. The process legitimates the decision and creates commitment to obeying it that is found to persist into the future. In addition, studies find that people's general commitment to obeying the law is heightened when they experience fair procedures in legal settings.

A common misconception about regulatory procedures is that you cannot deliver undesirable outcomes without being unpopular. This suggests that the police and courts are inevitably unpopular. The study of people dealing with legal authorities that I have just described indicates that as long as people view the procedures they experience as fair, they are largely unaffected by their outcomes, even when those outcomes are negative.⁸ In addition, studies that interview people both before and after their personal experiences with legal authorities show that trust and confidence in legal authorities increases when people experience procedural justice, even in situations in which they receive a negative outcome.⁹ It might seem paradoxical but people are found to feel more trust in authorities after receiving a negative outcome than they did before receiving that outcome, as long as the authority involved behaves in a fair way. So, legal authorities can act in ways that are necessary to be effective in their regulatory role and simultaneously build confidence among the public.

Finally, people often suggest that procedures do not matter when the stakes are high. In fact, studies suggest that people continue to care about the fairness of procedures when the outcomes involved are substantial and important to them. This includes when the monetary stakes are high, as is true in civil cases;¹⁰ when people are very invested in the issues, for example in child custody hearings;¹¹ when their liberty is at stake, as is true in felony cases;¹² when people are incarcerated;¹³ and when important public policy issues are being decided.¹⁴

These same procedural justice judgments are also a key factor in the evaluations made by the general public of the courts as institutions.¹⁵ National surveys of public trust and confidence in state courts show that public evaluations of state

6. JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975).

7. LIND & TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE*, *supra* note 1.

8. For similar findings from research conducted in Chicago, see TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).

9. Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?* OHIO ST. J. CRIM. L. (forthcoming 2008).

10. Allan E. Lind, Carol T. Kulik, Maureen Ambrose & Maria V. de Vera Park, *Individual and Corporate Dispute Resolution: Using*

Procedural Fairness as a Decision Heuristic, 38 ADMIN. SCI. Q. 224 (1993).

11. BRYAN, *CONSTRUCTIVE DIVORCE*, *supra* note 2.

12. Jonathan D. Casper, Tom Tyler & Bonnie Fisher, *Procedural Justice in Felony Cases*, 22 LAW & SOC'Y REV. 483 (1988).

13. RICHARD SPARKS, ANTHONY BOTTOMS & WILL HAY, *PRISONS AND THE PROBLEM OF ORDER* (1996).

14. Tyler, *Social Justice*, *supra* note 1.

15. DAVID B. ROTTMAN, *TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS* (2005).

courts are based heavily upon evaluations of the fairness of court procedures.¹⁶ In particular, people are found to be sensitive to whether the courts protect their rights and to whether they think that judges are honest. While these procedural justice judgments are the most important factor shaping trust and confidence in the courts, those interviewed are also sensitive to whether the courts treated the members of different groups equally, as well as to other structural issues about the courts, such as cost and delay. But, their primary basis for evaluation is procedural justice.

The strong linkage between procedural justice and evaluations of the courts was recently affirmed by a study conducted within the State Courts of California. The Administrative Office of the Courts undertook a study in 2005 in which a random sample of the residents of the state were interviewed about their trust and confidence in the California courts. An analysis of that information¹⁷ suggests that “[h]aving a sense that court decisions are made through processes that are fair is the strongest predictor by far of whether members of the public approve of or have confidence in the California courts.”¹⁸ The California courts are rated as being very fair in terms of treating people with dignity and respect, but as not particularly fair in terms of allowing them to participate in decisions that affect them. The report argues that “[p]olicies that promote procedural fairness offer the vehicle with the greatest potential for changing how the public views the state courts.”¹⁹

Interestingly, the report points to experiences with low-stakes courts, such as traffic court, as a particular source of dissatisfaction, and argues that all experiences with legal authorities, even relatively trivial interactions, are important to members of the public and need to be the focus of court design efforts. Finally, the report argues that there need to be mechanisms for the ongoing evaluation of people’s experiences with the courts, mechanisms institutionalized through periodic surveys of members of the public, especially those who have had experiences with the courts.

One reason that these findings are particularly important is that they provide an independent confirmation that issues of procedural justice matter in real court settings. This study was not conducted or evaluated by the academic researchers who have been responsible for many of the early studies of proce-

dural justice. Instead, the need for this study arose within the framework of court concerns in California; the study was designed and conducted within the framework of the administrative offices of the courts; and the report was written by David Rottman, a researcher at the National Center for State Courts.

Hence, the confirmation of core procedural justice findings is especially important.

Similar conclusions have also been reached by other judicial leaders. The White Paper on procedural fairness authored by Judges Kevin Burke and Steve Leben,²⁰ presented at the annual meeting of the American Judges Association in 2007 and which is the focus of this special issue of *Court Review*, is another example. The White Paper reviews research on procedural justice, including recent studies conducted within the court systems of Hennepin County, Minnesota, under Judge Burke’s direction, and in Brooklyn, New York.²¹ Again, these court-designed and -sponsored evaluations point to the importance of procedural justice in encouraging satisfaction, decision acceptance, and trust and confidence in the courts.²²

Finally, the findings outlined do not apply only to litigants or other members of the public who come to court (the “clients” of the court system). They also apply to the people who work within the court system. Studies of employees in general indicate that employees in a wide variety of types of work organizations evaluate their own experiences on the job in terms of the procedural fairness of their treatment by their own authorities. Research suggests that the degree to which employees follow work rules, as well as doing their jobs well, is linked to the fairness of workplace procedures.²³ Similarly, studies of agents of social control, for example police officers, suggest that their behavior on the job is related to how fairly they are treated by their supervisors.²⁴ Hence, the same principles that can be used to design efforts to deal with the public also apply to efforts to design effective approaches to dealing with the people working within the criminal justice system.

The procedural justice research findings "also apply to the people who work within the court system."

16. Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want for the Law and Legal Institutions?* 19 *BEHAV. SCI. & L.* 215 (2001).

17. ROTTMAN, TRUST AND CONFIDENCE, *supra* note 15.

18. *Id.* at 6.

19. *Id.* at 7.

20. *Procedural Fairness: A Key Ingredient in Public Satisfaction*, 44 *CT. REV.* 4 (this issue) (White Paper originally delivered at the annual conference of the American Judges Association, Sept. 2007, Vancouver, B.C.), available at <http://aja.ncsc.dni.us/htdocs/AJAWHITEPAPER9-26-07.pdf>.

21. M. SOMJEN FRAZER, *THE IMPACT OF THE COMMUNITY COURT MODEL IN DEFENDANT PERCEPTIONS OF FAIRNESS: A CASE STUDY AT THE RED HOOK COMMUNITY JUSTICE CENTER* (2006), available at http://courtinnovation.org/_uploads/documents/Procedural_Fairness.pdf.

22. See M. Somjen Fraser, *Examining Defendant Perceptions of Fairness in the Courtroom*, 91 *JUDICATURE* 36 (2007); Jake Horowitz, *Making Every Encounter Count: Building Trust and Confidence in the Police*, *NAT'L INST. JUST. J.*, Jan. 2007, at 8, available at <http://www.ncjrs.gov/pdffiles1/nij/jr000256c.pdf>.

23. Tom R. Tyler, *Promoting Employee Policy Adherence and Rule Following in Work Settings: The Value of Self-regulatory Approaches*, 70 *BROOK. L. REV.* 1287 (2005); Tom R. Tyler & Steven L. Blader, *Can Businesses Effectively Regulate Employee Conduct?: The Antecedents of Rule Following in Work Settings*, 48 *ACAD. MGMT. J.* 1143 (2005).

24. Tom R. Tyler, Patrick E. Callahan & Jeffrey Frost, *Armed, and Dangerous(?): Motivating Rule Adherence Among Agents of Social Control*, 41 *L. & SOC'Y REV.* 457 (2007).

FIGURE 1: DIRECT AND INDIRECT INFLUENCES ON PROCEDURAL JUSTICE

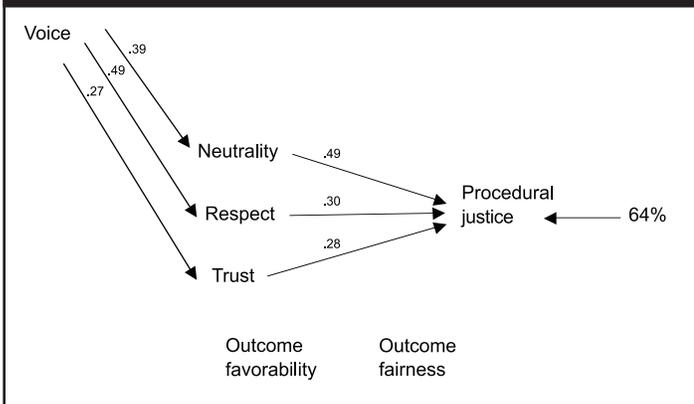


TABLE 2. TOTAL INFLUENCES ON PROCEDURAL JUSTICE

	Overall procedural justice
Voice	.55***
Neutrality	.49***
Respect	.28***
Trust	.30***
***p < .001	

WHAT IS PROCEDURAL JUSTICE?

Given that procedural justice matters, what are the aspects of the court experience that should be emphasized by legal authorities? There are four key procedural justice principles: voice, neutrality, respect, and trust.

Voice. People want to have the opportunity to tell their side of the story in their own words before decisions are made about how to handle the dispute or problem. Having an opportunity to voice their perspective has a positive effect upon people’s experience with the legal system irrespective of their outcome, as long as they feel that the authority sincerely considered their arguments before making their decision. This desire for voice is found to be one of the reasons that informal legal procedures such as mediation are very popular. People value the chance to communicate with the mediator, indicating what they view the problem as being and making suggestions concerning how it should be handled.

Neutrality. People bring their disputes to the court because they view judges as neutral, principled decision makers who make decisions based upon rules and not personal opinions, and who apply legal rules consistently across people and over cases. To emphasize this aspect of the court experience, judges should be transparent and open about how the rules are being applied and how decisions are being made. Explanations emphasizing how the relevant rules are being applied are helpful.

Respect. Legal authorities, whether police officers, court clerks, or judges, represent the state and communicate important messages to people about their status in society. Respect for people and their rights affirm to people that they are viewed as important and valuable, and are included within the rights and protections that form one aspect of the connection that people have to government and law. People want to feel that when they have concerns and problems both they and their problems will be taken seriously by the legal system.

Respect matters at all stages, and involves police officers and court clerks as well as judges. It includes both treating people well, that is, with courtesy and politeness, and showing respect for people’s rights. For example, when people come to court they are often confused about how cases are handled.

COURT MANAGEMENT STRATEGIES

How can we secure the gains associated with procedural justice? We need to design a court management framework that treats people’s entire experience with the legal system from a procedural justice perspective.²⁵ Studies suggest that people are influenced by their treatment at all stages of their experience, and by all the authorities whom they encounter. This includes their experiences with the police, their out-of-court experiences with their lawyers, their treatment by jail authorities, court clerks and bailiffs, and their experience in the courtroom dealing with judges and lawyers. Consequently, we need to emphasize procedural justice during initial contacts with the police and jail authorities; during experiences with attorneys throughout the case disposition process; in contacts with court clerks and other administrative personnel; in the conduct of settlement and pretrial mediation procedures; during experiences with judges and lawyers during trials and in informal proceedings; and in posttrial experiences involving the implementation and enforcement of orders, as well as in any subsequent incarceration.

It is equally important to remember that everyone involved with the courts treats their experience as a “civics lesson” about the legal system. This includes the parties to any case, but also is true for their families, friends, and other observers; witnesses; jurors; as well as all of those who hear stories about the courts from their friends, family, neighbors, or coworkers. And, of course, everyone is affected by the stories that appear in the mass media.

Does everyone share these procedural justice concerns? Studies suggest that procedural justice judgments dominate the reactions of all of the people who deal with legal authorities across ethnic/racial groups, among the rich and poor, and for both men and women.²⁶ Most important, they dominate the concerns of the members of the major minority groups in the United States, in particular African-Americans and Hispanics.²⁷

25. TOM R. TYLER, *PSYCHOLOGY AND THE DESIGN OF LEGAL INSTITUTIONS* (2008).

26. Tom R. Tyler, *Governing Amid Diversity: The Effect of Fair*

Decisionmaking Procedures on the Legitimacy of Government, 28 L. & SOC’Y REV. 809 (1994).

27. TYLER & HUO, *supra* note 5.

Providing people with information about what to do, where to go, and when to appear, all demonstrate respect both for those people and for their right to have their problems handled fairly by the courts. Brochures or websites explaining court procedures, as well as aids such as help desks, are found to be valuable.

Trust. Studies of legal and political authorities consistently show that the central attribute that influences public evaluations of legal authorities is an assessment of the character of the decision maker. The key elements in this evaluation involve issues of sincerity and caring. People infer whether they feel that court personnel, such as judges, are listening to and considering their views; are being honest and open about the basis for their actions; are trying to do what is right for everyone involved; and are acting in the interests of the parties, not out of personal prejudices.

THE INFLUENCE OF PROCEDURAL CONCERNS

Using the data collected in the study of personal experiences with the courts discussed above, it is possible to examine the influence of the four antecedents of procedural justice that have just been outlined. An analysis of the four factors considered at the same time suggests that neutrality, trust, and respect directly shape overall evaluations of procedural justice, but that voice does not. However, an analysis that allows both direct and indirect influences, shown in Figure 1, indicates that voice is indirectly important because it shapes neutrality, trust, and respect. An analysis that considers both direct and indirect influences at the same time, shown in Table 2, indicates that all four factors matter. Interestingly, neither outcome favorability nor outcome fairness directly influences overall procedural justice judgments. The willingness to accept court decisions, in other words, was about the procedures used to reach those decisions, not the decisions themselves.

DESIGN IMPLICATIONS

The courts are not a store, so “customer satisfaction” is not their primary goal. Their goal is to fairly resolve conflicts and accurately administer the law. However, the courts need to take people’s concerns seriously, since the courts have the task of conflict resolution, and whether people will accept their

decisions matters. Further, whether people feel that justice has been achieved is central to their trust and confidence in the court system.

A beginning point for dealing with people’s concerns is the recognition that people come to court about issues that are important to them, irrespective of the strength of their legal case. Legal authorities can communicate that their decisions reflect a sincere effort to reasonably apply the law to these problems and therefore ought to be accepted and followed in a variety of ways. Authorities can provide evidence that they are listening to people and considering their arguments by giving people a reasonable chance to state their case, by paying attention when people are making that presentation, and by acknowledging and taking account of people’s needs and concerns when explaining their decisions. This is true even if the authorities cannot accept those arguments and give people what they feel they deserve.

SUMMARY

We live in an era of scarce resources and high levels of mistrust. Procedural justice approaches provide a mechanism for managing conflicts that produces authoritative decisions while sustaining, and even building, trust and confidence in the courts and the law.



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This article is based upon presentations to the California conference on court management (September 2007) and to the Federal Judicial Center’s annual training meetings for bankruptcy judges (June and August 2008).

AMERICAN JUDGES ASSOCIATION FUTURE CONFERENCES

2009 Midyear Meeting
 Sanibel Island, Florida
 May 14-16
 Sundial Beach Resort
 \$145 single/double

2009 Annual Conference
 Las Vegas, Nevada
 September 13-18
 The Golden Nugget
 Rate to be determined

2010 Midyear Meeting
 Tucson, Arizona
 May 19-21
 Loews Ventana Canyon Resort
 \$179 single/double

2010 Annual Conference
 Denver, Colorado
 Westin Tabor Center
 October 3-8
 \$205 single/double

Procedural Fairness as a Court Reform Agenda

David B. Rottman

This essay reflects on the ways in which procedural fairness can provide the direction for a revived court reform agenda. All previous eras of court reform were guided by a theory drawn either from academia or the field of management. Procedural fairness, in my view, is the organizing theory for which 21st-century court reform has been waiting.

Past eras of court reform accomplished a great deal. In 1950, there were 826 trial courts in California. Today, 58 trial courts—one per county—hear all manners of cases.¹ Management theories drawn from the business field provided the blueprint for court reform by (a) simplifying trial court structure through consolidation, (b) centralizing management, (c) replacing local court funding with state funding under a centralized budget, and (d) centralizing rulemaking.

By the 1970s, a more flexible approach to reform emerged, one that sought to optimize court performance by matching a court's organization with the broader socio-political context in which it operates. The inspiration was new developments in the sociology and social psychology of organizations. "Contingency Theory" views organizations as open systems responding to specific environments. This was translated by judges, court administrators, and consultants into a reform program seeking "decentralized coordination" that encouraged innovation. Subsequent theory-driven influences on court reform included "Total Quality Management," expressed as court performance standards adopted for both trial and appellate courts by national court leadership organizations in the 1990s.

THE LIMITS OF TRADITIONAL COURT REFORM

A 1977 national survey was designed to confirm that court reform had increased public trust in and support for the state courts. The Public Image of the Courts Survey oversampled residents of three states regarded by experts as having undertaken significant court reforms in recent decades, and three that had not. The results were disheartening: People in the reforming states were no more likely to be aware of recent changes in the court system than were people in the non-reforming states; they also were no more supportive of their courts.² Consolidating courts, centralizing court management, and implementing state funding did not resonate with the public or even penetrate their awareness.

The State of Utah in the early 1990s carried out a fascinating experiment. The backdrop to the effort was a solid 20 years of court reform in Utah that brought about significant unification of the state's courts and heightened the authority of the chief justice, and established a judicial council through a constitutional amendment. A justice system reporter from a major newspaper took a leave of absence to write a series of in-depth articles on issues relating to the courts. Over a one-year period, television and radio stations aired stories and public-service announcements relating to the courts, including four documentaries. An opinion survey was conducted in 1990 and repeated in 1991. There was no detectable change in the public's opinion of the state court system.³

More generally, 33 state-specific surveys and six national surveys on public opinion on the courts since 1977 do not record a significant change in how the public views the state courts. The expected payoff of higher levels of public trust and support for the state courts never really materialized from these reform programs. Courts became more businesslike and efficient, and more adaptable, but reform failed to address the core concerns of litigants, jurors, and others who enter the courthouse.

Procedural fairness, in contrast, offers the judiciary a reform program that strengthens the connection between the judiciary and the public. The promise of that program is that it will organize the work of the courts in a way that generates satisfaction, trust, and compliance with court orders. That goal takes on particular importance as efforts are made to politicize the state judiciary.

A NEW REFORM AGENDA

Where did court reformers go astray? Procedural fairness research offers a convincing answer. While court reformers focused on "instrumental factors" such as time to disposition and costs associated with structural and procedural changes, the public was, and is, focused on the quality of their interaction with judges and experiences within the court system.⁴

Procedural fairness can also explain why some court reforms proved successful. Problem-solving courts, of which some 3,200 now populate the court landscape,⁵ have been shown in rigorous evaluations to reduce recidivism levels in drug and mental-health cases significantly compared to tradi-

Footnotes

1. LARRY L. SIPES, COMMITTED TO JUSTICE: THE RISE OF JUDICIAL ADMINISTRATION IN CALIFORNIA 119 (2002).
2. STATE COURTS: A BLUEPRINT FOR THE FUTURE: PROCEEDINGS OF THE SECOND NATIONAL CONFERENCE ON THE JUDICIARY HELD IN WILLIAMSBURG, VIRGINIA 15 (Theodore J. Fetter ed., 1978).
3. UTAH COMMISSION ON JUSTICE IN THE TWENTY-FIRST CENTURY, FINAL REPORT 6-7 (1991).

4. Tom R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want for the Law and Legal Institutions?* 19 BEHAV. SCI. & L. 215 (2001).
5. C. WEST HUDDLESTON, III ET AL., 2 PAINTING THE CURRENT PICTURE: A NATIONAL REPORT CARD ON DRUG COURTS AND OTHER PROBLEM-SOLVING COURT PROGRAMS IN THE UNITED STATES I (National Drug Court Institute 2008), available at http://www.ndci.org/publications/PCPII1_web.pdf.