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PROCEDURAL JUSTICE IN POLICING: HOW THE PROCESS OF JUSTICE IMPACTS PUBLIC ATTITUDES AND LAW ENFORCEMENT OUTCOMES



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Abstract: An increasing number of widely publicized and divisive incidents between police and citizens suggest a need for police policies and practices to improve procedural justice. Procedural justice emphasizes the need for police to demonstrate their legitimacy to the public in four areas—voice, transparency, fairness, and impartiality. This article explains procedural justice and police legitimacy, examines the often racial divide between citizens and police, and offers implications for police policy and practice.

In recent years, a number of high-profile, controversial incidents involving police officers throughout the United States have called attention to a worrisome and increasing tension between law enforcement officials and the individuals they serve. These incidents, at times fatal, highlight a need to adopt effective policing policies and practices to address crime while strengthening community relationships. Although diminishing crime rates over the course of the past several decades may be a result of improved police performance and capability, public trust in the police has become relatively stagnant while declining in some communities of color.¹

Public confidence in the police hit a national 22-year low in 2015, with 52 percent of Americans expressing confidence, jumping a few points to 56 percent in 2016.² About one in 10 Americans reports having no confidence in their local police department, while one in four Black Americans report no confidence, highlighting a racial gap in public attitudes toward police.³ Meanwhile, many local police departments face limited budgets and more challenging daily responsibilities brought on by a renewed focus on accountability and efficiency, in addition to the real or perceived impact national criticism of police practices take on daily police work.

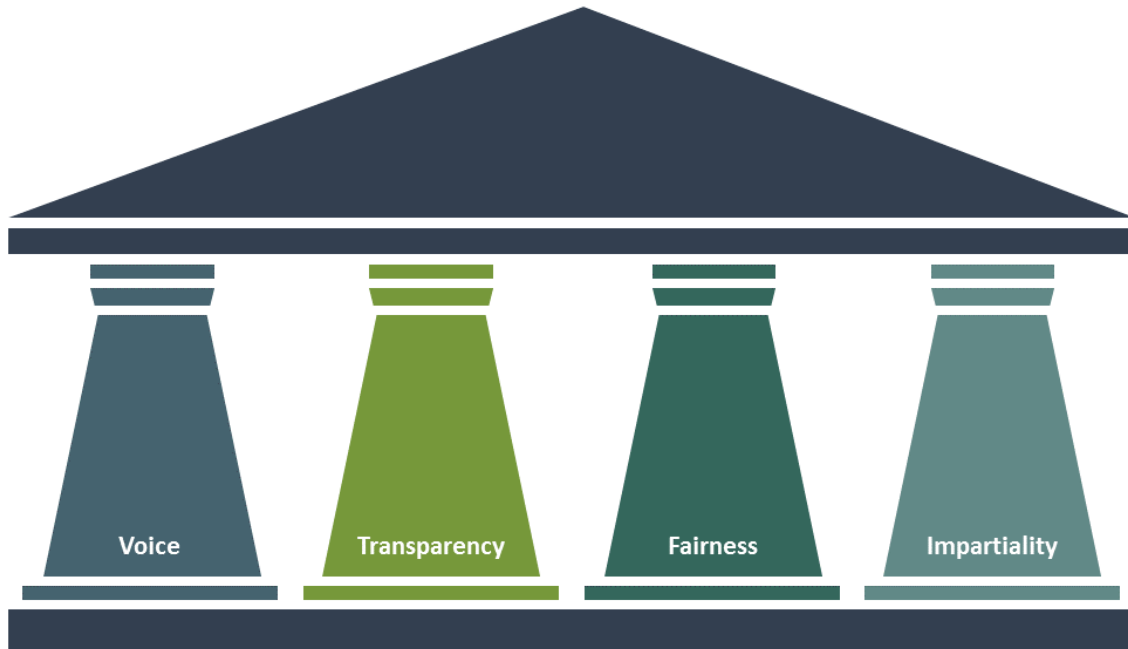
Low levels of public confidence is troubling for police organizations, which depend on community support, collaboration, and information to effectively address crime. The President's Task Force on 21st Century Policing report noted that a positive relationship between law enforcement and civilians is the "key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services."⁴ Numerous academics, policymakers, and practitioners have worked to address gaps in public trust, focusing on procedural justice as a means of improving public perceptions of police legitimacy—the extent to which civilians view police officers as rightful enforcers of the law, with whom they are willing to cooperate.

Examined here are procedural justice theory and recommendations for practical application to foster procedurally just organizations. While this article focuses on procedural justice as it relates to law enforcement practice, procedural justice may be applied across the justice system, including corrections, courts, and social service agencies, as well as healthcare and the private sector (e.g., customer service). A strong understanding of procedural justice—including its unique components and benefits, as well as the challenges it presents—can promote informed strategies to improve police-community relations.

What is Procedural Justice?

Procedural justice is based on the premise that the criminal justice system must consistently demonstrate its legitimacy—that its existence is valid and justified—to the public it serves.⁵ In deciding whether a law enforcement agency is legitimate and acting in service to their best interests, community members assess interactions not only by what officers do but also by how they do it. Research shows that the process of an encounter is as important as the outcome in shaping a community member's assessment of an interaction. Procedural justice is commonly described through four pillars or key components—voice, transparency, fairness and impartiality (see *Figure*).⁶ These pillars align with public demands for increased oversight to ensure integrity of police practices.

Figure
Pillars of Procedural Justice



Adapted from Tyler, T. R. (2004). Enhancing Police Legitimacy. *The Annals of the American Academy of Political and Social Science*, 593, 84-99.

Voice affords residents the opportunity to share their perspectives and is therefore important in facilitating positive interactions. Individuals are more content with police interactions when they feel that they have been allowed to be active participants in the decision making process or have, at minimum, been genuinely heard.

Transparency involves law enforcement authorities sharing processes and rationales behind their decisions at every stage of enforcement. Officers should share how their motives are based on a genuine intention to promote safety and well-being. Acknowledging that police officials are required to keep some information confidential, this aim can be best achieved through transparency of process, policy, and procedure. Transparency can also have the effect of improving perceptions of neutrality.

Fairness recognizes that community members want to be treated with dignity, regardless of their situation. The quality of interpersonal treatment that individuals experience is important regardless of the particular outcome of their situation, such as an arrest or traffic ticket.

Impartiality requires that residents perceive police decisions to be made on the basis of legal facts and an objective evaluation of the situation. Officers are expected to refrain from acting on prejudices or biases they may hold. If individuals perceive police as impartial, they are more likely to believe that their interactions with the police are fair. Conversely, perceptions of bias or a lack of neutrality in decision-making processes can damage public attitudes toward the police.

Procedural justice poses that the perceived fairness and integrity of personal interactions with law enforcement is paramount in shaping attitudes toward the police. As such, it is one method

of building law enforcement legitimacy and public trust, which has implications for both public safety and officer safety and efficacy. While highly publicized abuses of authority by police can fuel distrust and erode confidence, less publicized and more frequent personal interactions with law enforcement are in fact more influential in shaping community members' long-term attitudes toward the police.⁷ Outcomes of reduced crime, such as reductions seen in recent decades, are not as important as the actions of police in affecting legitimacy.

While procedural justice is often compared to community policing, the two models represent distinct approaches to addressing police-community relations. Community policing involves collaborative efforts to develop proactive solutions to underlying community problems rather than responding to incidents on a case-by-case basis.⁸ Community policing overlaps with the concepts underlying procedural justice and legitimacy. However, unlike the contemporary practice of community policing, procedural justice is not a set of programs and policies, but a framework to be applied to all interactions.⁹ In addition, procedural justice reflects decades of academic research in collaboration with law enforcement, reflecting the increasing movement of the profession towards evidence based practices. Although procedural justice has taken hold in policing, its roots are in the private sector focusing on fairness in intra- and inter-organizational relationships.¹⁰

What is Legitimacy?

Procedural justice is an important precursor to legitimacy in all areas of the criminal justice system. Police legitimacy is closely tied to police efficacy and public safety, and is an essential element of democracy.¹¹ It is characterized by “a feeling of obligation to obey the law and to defer to the decisions made by legal authorities.”¹² Legitimacy is a subjective evaluation of the authority of law enforcement, shaped by public opinions and beliefs stemming from:

- Public trust and confidence in the police.
- A sense of obligation and responsibility to accept police authority.
- A belief that police actions are morally justified and appropriate to the circumstances.¹³

When the police are perceived to be procedurally just in their actions, public recognition of police legitimacy improves along with the ability of police to carry out their responsibilities effectively.¹⁴ This is true even when the outcomes that individuals face are not ideal.¹⁵ As Papachristos, Meares, and Fagan (2012) suggest:

People will view a decision or law as legitimate even if the outcome (such as a court decision or a police action) works against their own self-interest, so long as they view the process by which said decision was made as being procedurally just.¹⁶

Legitimacy can increase police effectiveness through public compliance and cooperation. Since a ubiquitous police presence is unfeasible and undesirable, law enforcement officials “rely upon widespread, voluntary law-abiding behavior to allow them to concentrate their resources on those people and situations in which compliance is difficult to obtain.”¹⁷ Legitimacy is vital in this respect, as it encourages individuals to proactively and voluntarily take responsibility for obeying the law, as well as to actively cooperate with the police in reporting and preventing crime.¹⁸ One study found that a low perception of police legitimacy among the public had a

stronger correlation with crime rates than poverty, inequality, or unemployment—three factors which often dominate the narrative regarding the catalysts for crime.¹⁹ Legitimacy also has been tied to a broader set of benefits, which, in turn, may indirectly improve public safety. These benefits include social engagement and economic engagement—i.e., increased voter participation and local shopping activity.²⁰

The Divide between the Police and the Public

Meares, Tyler, and Gardener (2015) noted a disconnect between the how police judge their own actions (often on the basis of legal requirements) and how the public judges police actions (often on the basis of fairness and interpersonal treatment).²¹ The authors observed that public rejections of police behavior are often fueled by factors unrelated to the law, meaning that police behavior that is procedurally just—even if unlawful—may be perceived more favorably than behavior that is lawful but procedurally unjust. This may be due in part to the fact that public familiarity with the law is generally low, resulting in a stronger emphasis on perceptions of fairness in public assessments of police behavior. Inversely, police reliance on legal requirements plays a role in the perpetuation of implicit biases—the involuntary, unconscious attitudes and stereotypes that affect an individual’s actions and decisions²²—which often damage police-community relations.²³ Strict adherence to the law has also in some cases fostered a zero-tolerance environment in which even minor violations by citizens are addressed in a punitive manner.²⁴

Deterrence-based policies and practices rely on the premise that individuals obey the law in order to avoid punishment.²⁵ This notion is pervasive and is the basis for many common crime reduction strategies, including mandatory minimums and three-strikes laws.²⁶ However, the idea of “forced compliance” has been thoroughly rejected by criminal justice experts.²⁷ Instead, procedural justice theory, in line with early 20th century sociologists Durkheim and Weber, takes the perspective that forced compliance is costly and ineffective and that “a society will experience greater compliance with the law when a majority of the population shares the belief that the decisions of the ruling powers are legitimate.”²⁸ Thus, while the potential for negative consequences does deter some law-violating behavior, its influence is typically small.²⁹ Individuals, including those who have previously violated the law, are more likely to obey the law when they believe that local law enforcement are legitimate.³⁰ For instance, at least one study found that a stronger perception of legitimacy among individuals with gun-related charges was associated with a decreased tendency to carry a gun in public.³¹

The Criminal Justice System, Racial Bias, and Procedural Justice

In general, aggressive policing tactics, such as stop-and-frisk encounters, can undermine procedural justice and police legitimacy.³² While aggressive enforcement of the law has been advocated as one method through which social order is obtained, these types of tactics may lead individuals to feel “humiliated, violated, or even victimized” over time.³³ A 2010 study found that nearly half of respondents—Black and White male adolescents in St. Louis—had experienced what they characterized as police harassment.³⁴

Compounding this issue is the fact that aggressive policing tactics are frequently applied in a biased manner. With 42 percent of White Americans and just 14 percent of Black Americans reporting a lot of confidence in their local police departments, there is a clear racial divide in attitudes toward the police.³⁵ This divide is likely due to the disproportionate impact of biased criminal justice experiences and outcomes on members of minority communities. In the past, minorities have been the subject of overtly discriminatory criminal justice practices such as harsher sentencing regulations and the often violent enforcement of race-based Jim Crow legislation in the late 19th and early 20th centuries.³⁶

While these explicit forms of legal bias have declined, racial disparities continue to persist within the criminal justice system as a whole.³⁷ In the United States, Blacks were more than two times more likely than Whites to be killed by police in 2015 and 2016.³⁸ While police shootings may be on the decline in some areas—about 25 individuals were shot and killed per year in New York City in the 1980s, compared to about 12 per year in the 2000s³⁹—police violence has been the subject of increased public scrutiny in recent years, possibly as a result of news coverage and social media activity.⁴⁰ In the courts, though many biased sentencing laws have been eliminated, research has shown that race continues to play a role in sentencing outcomes.⁴¹ Bias within the criminal justice system may impact individuals' attitudes toward police due to their role within that system.

Both reality and perceptions of biased police behavior can lead to a deterioration of legitimacy. Police interactions have a strong impact on personal identity. When an individual is mistreated by an officer, that individual may likely interpret the interaction as an example of how the law enforcement community views all groups of individuals like them.⁴² Biased policing tactics can further influence views on their identity with a group. For example, in 2003, 54 percent of those stopped by police during stop-and-frisk encounters in New York City were Black,⁴³ despite representing only 25 percent of the population.⁴⁴ Similarly, Blacks are more likely to be stopped without cause than Whites.⁴⁵ Perceived or actual racial profiling leads to weakened views of police legitimacy, though individuals are less likely to perceive racial bias when processes are procedurally just.⁴⁶ These factors likely contribute to the racial gap in attitudes toward police.

Community policing and increasing the proportion of Black police officers have not proven to improve opinions of police among Black Americans.⁴⁷ However, some research suggests that the value of procedural justice in shaping perceptions of legitimacy exists across different ethnicities, gender, income, education, age, ideology, and political parties.⁴⁸ One study found regardless of race, legitimacy influences individuals' willingness to cooperate with the police.⁴⁹ Another study conducted found that procedural justice has a stronger impact on perceptions of police legitimacy among individuals who self-identified as "highly disengaged from the police" than those who were engaged.⁵⁰ These findings suggest by fostering more positive interactions, procedural justice can improve the relationship between minority communities and the police. However, attempts to strengthen perceptions of fairness should not replace efforts to reduce actual bias in policies and practices of law enforcement. More research is needed to further explain reasons for gaps in opinions to guide police in increasing procedural justice.

Implications for Policy and Practice

Foster Internal and External Legitimacy

Changes to policy, as well as to the internal culture of a police department, can transition police toward procedural justice. Meares, Tyler, and Gardener (2015) note that individual officers exercise a great deal of personal discretion in interpreting and enforcing the law.⁵¹ Experts have therefore pointed to a “need for police executives to treat their employees with the same sense of legitimacy and procedural justice that applies to members of the public.”⁵² Commonly referred to as *internal legitimacy* or *internal procedural justice*, officers are more likely to treat members of the public with “dignity, respect, and fairness” when they experience that same level of treatment from their police department supervisors.⁵³

The Police Executive Research Forum recommends several methods to improve internal legitimacy, including “creating meaningful and transparent paths for career advancement, ensuring that disciplinary systems are fair, and soliciting officers’ views about major issues of policy and practice.”⁵⁴ These internal processes can bolster external procedural justice by encouraging officers to take pride in the value of their work in the community and to adhere to the policies and practices set forth by their superiors.⁵⁵ As is noted in the President’s Task Force on 21st Century Policing report, “Officers who feel respected by their organizations are more likely to bring this respect into their interactions with the people they serve.”⁵⁶ One Chicago study found that internal procedural justice had a positive impact on external procedural justice, both directly and indirectly through an increase in officers’ trust in citizens. As a result of this impact, members of the Police Executive Research Forum believe that fostering both internal and external legitimacy is “an important new element of leadership.”⁵⁷ Similarly, the President’s Task Force on 21st Century Policing report recommends law enforcement agencies should adopt procedural justice as the guiding principle for internal and external policies and practices to guide their interactions with rank and file officers and with the citizens they serve.⁵⁸

Implement Policies to Promote Procedural Justice

The President’s Task Force on 21st Century Policing report stated, “Sometimes, actions are perfectly permitted by policy, but that does not always mean an officer should take those actions.”⁵⁹ Expansion of police efforts beyond a sole focus of law enforcement, such as community engagement, can have a positive impact on officers and community members.⁶⁰ Police departments should avoid zero-tolerance policies, which may have fueled implicit bias in many police departments.⁶¹

Civilian boards. Weitzer (2002) suggests that the creation of a civilian board to provide police oversight can help to prevent, and properly address, misconduct. Such boards have broad support across a variety of races and ethnicities.⁶² Civilian boards also can measure public levels of trust in local police along with traditional measurements like changes in crime rates. In addition, many departments may benefit from the addition of intermediaries who can provide education to the community regarding police policies and practices and bring the concerns of community members to the attention of law enforcement leaders.⁶³ Civilian boards can be particularly helpful in promoting opportunities for co-learning, relationship building, and collaboration

between police and historically marginalized communities, such as racial minorities, immigrants, young people, and the LGBTQ community.⁶⁴

Acknowledge past wrongs. The President’s Task Force on 21st Century Policing report recommends that law enforcement agencies recognize and publicly acknowledge their own roles in past instances of prejudice or abuse of power, perhaps through the publication of case studies aimed at addressing transgressions and presenting recommendations for handling similar situations in the future.⁶⁵ Training can help officers to recognize and address their own implicit biases and can provide a deeper understanding of policing history, which continues to deeply impact public perceptions today.⁶⁶ It is important to note that while these policy recommendations can have a positive impact, procedural justice will often require a shift in police culture that reaches beyond the implementation of any specific policy.

Consider Barriers to Adoption of Procedural Justice

Skepticism and pushback. In a profession accustomed to waves of buzzwords, a major challenge to incorporating procedural justice into the culture of an agency is the slow work of gaining staff buy-in to the concept. The timeline for culture change is long. One chief from a mid-size agency noted that it took nearly half a decade before procedural justice stopped being the Chief’s idea and started being the organization’s idea.⁶⁷ As is the case in many policy areas, procedural justice requires a shift in personal perspectives which can present a significant challenge to police officers and agencies. Some officers—and even residents—have expressed concern over whether it is possible for law enforcement officers to perform their duties through a procedural justice approach, particularly in high-crime areas.⁶⁸ Some may still argue that procedural justice represents a “soft on crime” attitude or that it is not feasible in the context of already taxing and hectic police work.⁶⁹ Consensus and support for procedural justice, however, can be gained by building internal legitimacy through involvement of individuals working at every level in crafting and implementing new policies.⁷⁰ Further, police leadership can garner buy-in by making explicit the connections between internal procedural justice and external procedural justice. By creating procedurally just policies and protocols in areas most relevant to line officers such as discipline, use of force and promotion, police leaders can highlight their own tangible action towards procedurally just organizations.

It is important to discuss the role of perceptions in procedural justice and legitimacy. Some officers may struggle with the terminology of “legitimacy,” feeling it threatens their honor as officers of the law. One police chief in a large city said, “To talk about whether the police are ‘legitimate’ implies that if anyone criticizes us, suddenly we are ‘illegitimate.’ And that word doesn’t go down well with officers who have made a life’s work of protecting the public and trying to do right by people.” Certainly, police officers are granted legal legitimacy in that they are legally authorized to perform specific duties. However, in context of procedural justice, legitimacy refers to “the extent to which a police department is perceived as morally just, honest, and worthy of trust and confidence.”⁷¹ This sense of legitimacy—though subjective in nature—greatly impacts the ability of officers to perform their jobs safely and effectively. It may be useful to identify the ways in which procedural justice is consistent with the current values and goals of an organization, and work to underscore those factors during any discussions of implementation.⁷²

Lack of implementation research. While a substantial body of research has pointed to the benefits of procedural justice, little research has truly delved into the specifics of implementation. Tyler and Wakslak (2004) note, “It is good to speak of ‘respect,’ ‘neutrality,’ and ‘fairness,’ but what seems to us to be a necessary next step is work that identifies exactly what those terms mean in the context of police-citizen interactions.”⁷³ It may be a good idea for police departments to reach out to other departments that have implemented systematic change in this area to understand what worked for them.⁷⁴ Further, it is useful to gauge an organization’s development and readiness for organizational change; this includes organizational culture (shared values and beliefs that govern staff), organizational climate (how staff experience organizational culture/their atmosphere), possible policy changes to align with new practices, leadership support and buy-in, and capacity for training and coaching.⁷⁵ A comprehensive review of procedural justice implementations around the country may help to develop a stronger set of best practices regarding police-public interactions. Furthermore, police departments should consider the ways in which procedural justice aligns with other key initiatives and the overall culture of the department, rather than viewing procedural justice implementation as an isolated process.

Conclusion

Less than half of Americans report a great deal of confidence in local police despite several decades of relatively consistent reductions in crime,⁷⁶ making it clear that the policies and practices of many police departments are in need of a change. Failure to make changes may result in law enforcement being seen as illegitimate by those they serve.⁷⁷ Considering that police are the first-line and more visible position to exemplify our systems’ failings and inequities, procedural justice can serve as a tool to explain police response to complex social problems to the community. While additional research is needed to continue developing best practices and to bolster our understanding of legitimacy, particularly in terms of how it interacts with historical context and demographic factors like race and ethnicity, a variety of studies have demonstrated the efficacy of procedural justice in improving compliance and cooperation through improved attitudes toward police. As a result, procedural justice is a powerful tool in improving public safety.

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