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Perceived Fairness and Regulatory Policy: A Behavioural Science Perspective on Government-Citizen Interactions

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OECD REGULATORY POLICY WORKING PAPERS

PERCEIVED FAIRNESS AND REGULATORY POLICY

A BEHAVIOURAL SCIENCE PERSPECTIVE ON GOVERNMENT – CITIZEN INTERACTIONS

By E. Allan Lind* and Christiane Arndt+

JEL Classification: D03, E03

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By E. Allan Lind* and Christiane Arndt[+]

Abstract

A great deal of research in psychology and policy studies has demonstrated that when citizens feel fairly treated in their encounters with government agencies, they are more likely to accept and comply with regulatory rules and decisions, to feel included in society and to trust their government. This paper explains how careful design of procedures in the development and administration of laws and regulations and targeted training of officials can enhance perceived fairness and produce greater decision acceptance and compliance. It draws on a large number of empirical studies in different policy settings and countries to identify three key factors that drive perceived fairness: voice, respect and explanations. Successful programs to improve subjective justice must be built upon a foundation of objective justice: attempts to simulate fairness without actually providing objectively fair procedures tend to provoke very negative reactions when the true nature of the unfair process is discovered. Findings of this paper feed into OECD work on trust, open government and stakeholder engagement.

JEL Classification: D03, E03

Key words: regulatory policy, trust, inclusive, behavioural economics, consultation, compliance, enforcement, appeal processes, citizen

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II. THE HUMAN SIDE OF REGULATION

Over the past half century, many governments have made use of research and theory from economics, political science, and policy studies to improve the objective quality of regulation and to make the regulatory process more effective (see, e.g., OECD, 2015a and 2014a, Coglianese, 2012; Radaelli and Fritsch, 2012). Almost all OECD countries have built systems to use evidence in the development of regulations, to consult with stakeholders to better understand the impact of planned laws and to reduce red tape (OECD, 2015a). Yet there is sometimes a disturbing disconnect between advances in the objective quality of regulations and citizen perceptions of those same regulations (OECD, 2012). Even in nations with objectively good regulatory regimes, citizens often feel that they are not treated well in interactions with agencies that promulgate and administer regulations. Even as the objective quality of government generally and the regulatory function of government in particular might have improved, trust in government has decreased. Today only four out of ten citizens in OECD countries say they have confidence in their national authorities (OECD, 2015b). This disconnect between the reality of government and the experience of government has arisen in part, we believe, because little attention has been devoted to subjective justice when regulatory procedures are designed and administered. In contrast to the considerable effort that has been devoted to improving the efficiency and economic logic of regulations, often little or no attention has been devoted to designing and implementing regulations in ways that assure that citizens emerge from encounters with their government feeling that they have been treated fairly. As we explain in greater detail below, the disconnect has important policy consequences because when citizens have experiences with government that leave them feeling unfairly treated, they emerge from the

experience less willing to comply with regulations and with lower trust in government. These negative attitudes in turn make enforcement of regulations more difficult and can make the entire regulatory process less effective. In fact people are capable of acting against their own financial interests where they perceive unfairness: Individuals or organisations who feel unfairly treated may decide not to co-operate even if the consequences are negative for them (see, e.g., Giacalone and Greenberg, 1997; Lind, 1997, Lind, Greenberg, Scott, and Welchans, 2000). On the contrary, when citizens feel fairly treated they are generally willing to incur costs for the greater good provided they feel confident that others are doing the same (Lunn, 2014).

Fortunately, there is a substantial literature of scientific studies and policy research that can help policy makers to craft and administer regulations in ways that enhance feelings of fair treatment and inclusion. This body of work is based on research in social psychology and sociology on perceptions of "procedural justice." Procedural justice perceptions are judgments of the fairness of the process and impressions of fair or unfair interpersonal treatment engendered by experiences with government institutions or agents. Perceptions of *un*fair treatment are especially powerful because such judgments produce feelings of exclusion and exploitation. In the extreme the impression that one has been treated unfairly can provoke quite strong, and sometimes very emotional, negative reactions (see, e.g., Lind, 2001; Lind, Greenberg, Scott, and Welchans, 2000; Van den Bos, Lind, and Wilke, 2001).

Research in this area has identified several elements of process and practice that reliably affect perceptions of fair or unfair treatment in interactions with government agencies (Lind and Tyler, 1988; Tyler, Goff, and MacCoun, 2015; Tyler and Lind, 1992, see also MacCoun, 2005). The psychological and sociological literature on procedural justice has been augmented by empirical studies of policy innovations designed to improve perceived fairness in regulatory and judicial contexts. These policy studies confirm the impact of perceived fairness and demonstrate the potential benefits of procedures designed and administered in ways that promote feelings of fair treatment.

There are three general lines of scientific research that provide reasons for policy makers to attend to the perceived fairness of regulations. First, research shows that when people feel treated fairly by government their immediate reactions make enforcement of regulations and decisions easier. Perceptions of fair process lead to greater acceptance of agency decisions, better compliance with regulations, and more cooperative behaviour in dealing with agents of the government (e.g., Lind, Kulik, Ambrose, and deVera Park, 1993; Mazerolle, Bennett, Antrobus, and Eggins, 2012; See, 2009; Tyler, Sherman, Stang, Barnes, and Woods, 2007). These consequences of fair treatment are collectively termed "fair process effects" in the scientific literature. In practical terms, these fair process effects suggest that if perceived procedural justice elements are built into the design and administration of a regulation, the resulting regulations will in fact work better because regulations and decisions will be more readily accepted and voluntarily obeyed, making enforcement of the regulation easier.

Designing regulation with the psychology of fairness in mind is conceptually similar to incorporating findings from the field of behavioural economics into regulatory policies and practices. Both procedural justice research and behavioural economics research provide scientific documentation of the fact that people are sometimes not as rational as traditional economics assumes, and both lines of work provide findings that can guide policy makers to fashion policy in a way that builds upon, rather than clashing with, these "irrationalities". Just as regulations designed with behavioural economics in mind can "nudge" people away from making decisions that might harm them (e.g., Thaler and Sunstein, 2009; Lunn, 2014),

the incorporation of factors that promote perceived fairness into the administration of regulations invites people to approach the regulatory process in a more cooperative frame of mind.[1]

A second finding that suggests the wisdom of considering perceived fairness has to do with more general reactions to encounters with government. Studies show that perceptions of procedural fairness play a substantial, even a central, role in determining citizens' overall trust in government, their attitudes about the legitimacy of state action, and their obedience to laws generally (Tyler, 1990, 2011; Hodges, 2016; for an excellent recent review of the role of perceived procedural justice in police-citizen encounters, see Tyler et al., 2015). Experiences that are seen as fair not only tend to make people more willing to accept specific decisions and comply with specific regulations, they also leave citizens more likely to see their relationship with their government as positive and secure (Lind, 2001; Tyler and Blader, 2003; Van den Bos, Lind, and Wilke, 2001). This in turn leads the citizen to feel safe in trusting the state and its agents, which in turn encourages still more cooperative behaviour vis-à-vis government. In today's social and political environments—where trust in government appears to be declining—procedures and processes that build (or rebuild) trust and legitimacy are certainly worthy of consideration. Experiences that promote perceptions of fair treatment in interactions with government can help strengthen the "social fabric" of the state.

A third general finding that commends attention to perceived fairness comes from a long history of social psychological and policy studies and also from some recent findings of neurological studies on how the human brain experiences fair and unfair treatment. Studies in all these fields show that people experience more positive emotions when they feel fairly treated and that they experience negative emotions, even real psychological pain, when they feel unfairly treated. Some of the earliest studies on perceived procedural justice found that people report positive emotions, including more satisfaction, when they encounter procedures they see as fair, and that they report more negative emotions when they encounter procedures they see as unfair (e.g., Adler, Hensler, and Nelson, 1983; Walker, LaTour, Lind, and Thibaut, 1974; Tyler, 1984, 1987). Psychological researchers sometimes label fairness perceptions as "hot" cognitions, because they are closely tied to strong emotional responses.

Research in social neuroscience leads to similar conclusions, based on how the human brain reacts to fair or unfair treatment (see e.g. Lieberman, 2014; Tabibnia and Lieberman, 2007). For example, one study that looked at the brain's response to fairness (Tabibnia, Satpute, and Lieberman, 2008) found that being treated fairly activates areas of the brain that are also involved in the experience of pleasure. Even more important, perhaps, other neurological science studies have shown that experiences that seem unfair—experiences that seem to exclude the individual in question—activate areas of the brain involved in the experience of physical pain (Eisenberger, Lieberman, and Williams, 2003; Lieberman and Eisenberger, 2012). As explained in the box below on "the biology of fairness," these findings suggest that experiencing unfair, exclusionary treatment in an interaction with government might be more than just figuratively painful, such an experience might really hurt excluded citizens. It is worth considering that by designing and administering of regulations in ways that take into account perceived fairness, government can minimize experiences that are seen as unfair—and thus painful—for their people.

[1] Theoretical works in both the psychology of fairness (Lind and Tyler, 1988; Lind, 2001; Van den Bos et al., 2001) and behavioural economics (Kahneman and Frederick, 2002, 2005) explain these apparent irrationalities by arguing that people have two types of mental processes that operate simultaneously as they consider their experiences and decisions. The first, quick processing, type of thinking relies on heuristics to guide behaviour and attitudes as information comes in about what the person sees and experiences. The second, more rational, process works more diligently at defining and processing the self-interest implications for the person involved. For our purposes here, this means that we cannot rely on people only showing rational self-interested responses to regulations and decisions, we must also accept that the other, social-oriented "heuristic processor" will be using fairness judgments to guide the citizen's reactions to encounters with government. Lind and Tyler (1988) argue that behaviour is shaped by outputs from both processors, and indeed this is what is seen in practice (see Figure 1 below).

Box 1. The Biology of Fairness

The assertion that fair treatment can be viewed as a direct social good while unfair treatment can be seen as a real harm is based in part on recent developments in our understanding of how the human brain reacts to social events. These studies are part of the expansion of research on the workings of the "social brain." Research shows that experiences that make people feel unfairly excluded from social activities activate the same areas of the brain as exposure to a painful physical stimulus. Other studies show that situations that are manifestly fair activate the same brain centers as pleasure with material rewards.

The neurological studies of the workings of the human brain show that there is a biological basis for fairness concerns. Developments in medical technology have made it possible to monitor in real-time which parts of the brain are most active when people encounter various experiences. A variety of techniques exist for this sort of research, but technology the most commonly used now involves employing an "fMRI" (functional magnetic resonance imaging) machine to see which parts of the brain are receiving the greatest blood flow at any given time, under the assumption that greater blood flow reflects more brain activity. The technique is similar to the well-established idea that in physical exercise greater blood flow is seen in the muscles that are most active in a particular physical activity.

The positive effects of fair treatment are seen in a study that observed how the brain reacts to fair treatment in a laboratory game. In a study conducted by Tabibnia et al. (2008), people lying in an fMRI machine played an "ultimatum game," supposedly with other research participants. The ultimatum game involves one player being given a cash amount to divide any way he or she wishes and the other player having simple veto power over the subsequent division. Thus a participant might be told that the other player had been given $10 to divide and had decided to give the participant $4 and keep the rest. The participant would then have to decide whether to keep the $4 or to veto the whole deal, in which case neither party gets any payment. In the Tabibnia et al. experiment, the person in the fMRI machine was always in the position of the second player, so he or she had to decide whether to accept the other's division or reject it. The experimenters manipulated the offers the participant received so that some offers were fair but low in monetary value to the participant in the fMRI, others were fair and high in value, others unfair and low in value, and still others unfair and high in value. The studies showed that when people received fair offers, whether they were worth more or less money, the parts of their brains that were most active were brain areas that had been found in previous studies to be involved in feelings of positive emotions. Fairness, as Tabibnia et al. note, has a distinctly "sunny side" in terms of the brain's reactions.

Perhaps the most convincing evidence of the idea that we are "hard-wired" to react negatively to unfairness and exclusion comes from another study (Eisenberger et al., 2003). In that study, participants played an online game during their fMRI session, and the experimenters manipulated the game experience so that at one point, for no apparent reason, the other players simply stopped including the experimental participant in the game, in essence completely excluding the participant from the social group. When this social exclusion occurred, a specific part of the brain (an area called the "anterior cingulate cortex") became active. Interestingly, this area of the brain, activated when one feels excluded, is the same area that, in other studies, had been shown to be involved in the experience of physical pain (see Lieberman, 2013 for a video that includes a description of the study and illustration of the exclusion stimulus). In short, being excluded from a social interaction where one feels entitled to participate "turns on" the same part of the human brain as does sticking one's hand in scalding water! In the Eisenberger et al. study, the intensity of the brain reaction correlated with reports from the participants of how distressed they felt at being excluded.

As is described in greater detail in the section of this report that explains the underlying psychology of perceived fairness, many earlier studies in social psychology had shown that people respond very strongly to experiences of unfair treatment or unfair processes (see Lind and Tyler, 1988, for a summary). Current psychological theory explains these "hot" reactions to unfairness by linking the experience of unfair treatment to fears of exclusion and exploitation (e.g., Lind, 2001; Tyler and Blader, 2003; Van den Bos et al., 2001). Neuro-scientists who work in this area make a similar argument for why people are so sensitive to fairness and unfairness. They suggest that our brains have evolved with "built-in" preferences for fair treatment and strong fundamental aversion to unfair and exclusionary treatment (see generally Eisenberger, 2011; Lieberman, 2014; Lieberman and Eisenberger, 2012). These scholars argue that humans have evolved to be sensitive to fairness and exclusion because during much of our existence as a species exclusion from our core social groups, or unfair exploitation, meant we were less likely to survive. This line of reasoning points out that just as physical pain helps us to avoid physical damage, social pain helps us to know which groups or institutions to engage with and which to avoid.

Box 1. The Biology of Fairness (*cont.*)

The brain research described above is part of a burgeoning field of neuroscience and psychology that points to the importance of the "social brain" in processing experiences and deciding on reactions to those experiences. This term—"the social brain"—is now often used to refer to the physiology and psychology that drives decisions, attitudes, and behaviour that are concerned with issues like those addressed here: issues of social inclusion, fairness, cooperation, and trust. Research on the social brain reminds us that our species reacts not only in terms of logic and rationality, we are also driven by concerns about social connections and by the implication of experiences for social status and inclusion.

All of this is relevant to our considerations here because in the final analysis all government, including government regulation, works through the brains of those subject to the government in question. Policy makers would do well to consider that the same brain that calculates the costs and benefits associated with a given regulation also calculates the apparent fairness or unfairness of the regulatory process. That brain, driven by both "rational" economic concerns and "subjective" concerns about fairness and inclusion, combines input from both types of considerations as it decides whether to obey a given regulation or place its trust in the government that promulgates that regulation.

As we begin a detailed discussion of perceived fairness and regulatory policy, it is important to distinguish perceived procedural fairness from other attitudes or reactions that citizens hold. The perceptions of fair or unfair treatment examined in the studies described here are not the same thing as simple satisfaction with the regulatory experience, and we should not conflate these two types of reactions. Fair treatment can create satisfaction and unfair treatment can create dissatisfaction, but fairness perceptions are more than satisfaction ratings about interactions with government. There are research studies that show a person can feel he or she was treated fairly and still be disappointed and dissatisfied with the outcome received (e.g. Walker et al., 1974). In fact it is even possible to receive a satisfactory outcome and still feel unfairly deprived of appropriate consideration or respect. As other scholars have pointed out (e.g., Coglianese, 2003), simple satisfaction ratings are not sufficient on their own to serve as indicators of the quality of policy, in part because they can be influenced by a variety of transitory and extraneous factors. For example, general trust in government, the current economic situation and prior expectations may all influence satisfaction with the quality of regulations (OECD, 2012). Perceived fairness ratings, on the other hand, are much more stable, and they have been shown to have much stronger cause-and-effect links to subsequent attitudes and behaviours than do satisfaction ratings (see, e.g., Lind et al., 1993; Tyler, 1990).

Procedural fairness judgments are also different from assessments of the fairness of material outcomes. While the objective fairness of outcomes is of course an important policy consideration, subjective judgments of the fairness of outcomes are less important psychologically than subjective judgments of the fairness of process. Research in the social psychology of procedural justice (e.g., Lind et al., 1993; Lind and Tyler, 1988; Walker et al., 1974; Tyler 1990) has shown that while the fairness of the outcome does exert some effect on whether the process is seen as fair, other factors—especially perceptions of voice, respect, and explanations—are more influential than outcomes in determining whether a given interaction is seen as fair. In addition, impressions of process fairness generally exert more influence on compliance, trust and cooperation, and perceptions of legitimacy than do judgments of the fairness of outcomes (see, e.g., Lind et al., 1993; Lind and Tyler, 1988; Tyler, 1987, 1990). As noted above, the psychological power of process fairness appears to be tied to the fact that people interpret their experiences with government by judging whether the process gives them evidence that they are included, valued, and secure members of the community. Outcomes have less impact because they only tell citizens whether they were right or wrong, favoured or disfavoured, in this particular interaction.

Finally, it is important to distinguish the type of perceived fairness that is the focus of this report from abstract judgments about fairness or social justice. The fairness judgments considered here are not general opinions about whether some regulation would likely be generally fair or unfair. Rather, the justice judgments of concern throughout this report are personal reactions to real individual experiences with government: the research described here has studied how people arrive at perceptions of process fairness from their personal experiences and how these experience-based fairness perceptions then affect other attitudes and actions.

The material presented below explores what it is that makes people feel fairly treated and how fairness perceptions affect the way people think about and react to government and its rules and regulations. The report will also discuss how what we know about the psychology of fairness can be used to improve the design, implementation, and assessment of regulations. Before we consider details of how perceived fairness works, however, it is worth noting that while perceptions of fair treatment should be an important criterion of good design and administration in regulations, perceived fairness certainly should not be the only criterion.

Objective and subjective criteria for good regulatory policy

It is not the purpose of this report to argue that policy makers should substitute perceived fairness for other criteria or measures of good regulatory policy. That would be an unwise course for both moral and practical reasons. It is essential that regulations be designed and administered in an objectively fair, economically efficient, and policy-effective manner. But while high objective quality in regulation is necessary for good government, it is not enough. The best-designed regulation is a poor tool for governing if it can only be enforced through constant surveillance and draconian punishment. It makes much more sense to seek to improve *both* the objective quality of a regulation *and* the impressions of fair treatment engendered by citizens' personal experience with the regulation.

An analogy to transportation engineering might put these issues in perspective. Good engineers could build a train or an automobile that would transport people quickly, safely, and efficiently, but if they did not take into account issues of comfort and convenience, few people would willingly use that form of transportation. On the other hand, there would not be any point in building a wonderfully comfortable train or car that was also needlessly slow, expensive, or unsafe. The obvious solution is to design trains or cars that provide both objectively good transportation and a pleasant passenger experience.

Similarly the obvious solution in regulatory policy is to seek to craft regulations that are both objectively good *and* likely to produce high levels of perceived fairness. Including subjective-justice factors in the list of criteria for a well-designed and well-administered regulation might sometimes make things a bit more complicated, but such considerations are no barrier to objectively fair and effective regulatory design. Trade-offs between, say, cost efficiency and fair process might have to be weighed and decided, but there is no inherent conflict between subjective and objective criteria for good regulatory policy. Adding perceived fairness to the desiderata for good regulation involves paying attention to making the processes involved more inclusive, more engaging, and more comprehensible, but none of these considerations preclude meeting other goals of good regulatory policy. Indeed, the compliance-enhancing effects of incorporating subjective fairness concerns in regulatory design and administration mean that improving perceived fairness can promote objective efficiency and effectiveness.

It is worth noting in this context that the research literature on subjective justice shows that a gloss of apparent fairness cannot make up for objectively flaws or corruption in procedures or regulations (MacCoun, 2005). Studies of subjective fairness (e.g., Folger et al. 1979; Lind, Greenfield, Scott, and Welchans, 2000) have shown very negative reactions—variously labelled "frustration effects" or "vendetta

effects"—when people find out that an attempt has been made to deceive them about the true fairness of procedures.

With these considerations in mind, we proceed now to a more detailed discussion of perceived procedural justice, its causes, and its effects.

Why does fairness matter so much?

The earliest studies on perceived procedural fairness (Walker et al., 1974; Tyler and Caine, 1981) showed that people are quick to form fairness judgments and that these judgments have strong effects on their subsequent attitudes and behaviour toward those whose fairness is being judged. It took a great deal longer, however, for scientists to understand exactly why perceived fairness matters so much to people. There is now an emerging consensus among procedural justice theorists (e.g., Lind, 2001; Tyler and Blader, 2003; Van den Bos et al., 2001) that fairness judgments have such substantial impact on attitudes and behaviour because fair treatment is interpreted as an indication of one's inclusion and status in society while unfair treatment is interpreted as a warning sign of potential exclusion and exploitation. Viewed this way, the importance given to perceived fairness is reasonable in a psychological sense. Personal experiences with police and with the officials and agents who enforce government regulations generally constitute the major source of "personal data" that citizens have about their relationship with government. If, as psychologists suppose, they use fair or unfair treatment in these encounters to "diagnose" the health of their inclusion in the state or their status vis-à-vis the most powerful social entity in their lives, it is hardly surprising that fairness perceptions inform and drive behaviour towards and attitudes about the government.

Given our current understanding of why fairness matters, perhaps the best way to think of perceived procedural fairness is to consider positive fairness judgments as a shorthand label for a citizen feeling that "I have been treated in a way that reassures me about my status and inclusion in this society and in a way that makes me feel secure about cooperating as a willing member of this social entity." Negative fairness judgments can be similarly seen as shorthand for "I have been treated in a way that seems to question my status and inclusion in society and that makes me feel unsafe in cooperating with the government." Across a wide variety of settings studies have shown that people usually emerge from experiences with government agencies (and from experiences with employers, sellers, educators, and health care providers) with quite definite impressions of whether the procedure and process felt fair or not. Procedural justice perceptions have been studied, and their impact on attitudes and behaviours has been documented, in many different national cultures (see the research cited in Appendix A). For example, procedural justice effects, including the fair process effect mentioned above, have been documented in Europe (e.g., France, Germany, Spain, the U.K., Sweden, and the Netherlands), East Asia (e.g., Japan, China), South Asia (India, Pakistan), Africa (Ghana, Nigeria), Oceania (Australia, New Zealand), and North America (Canada and the U.S.). Procedural justice judgments can be measured reliably using interviews or surveys. (See the section in Appendix A on "Measuring Procedural Justice" for examples of survey items used to measure perceived procedural fairness.)

It is important to note that while the positive effects of perceived fairness are strong and have critical policy implications, the negative effects of perceived unfairness are even stronger. Studies in social psychology and the psychology of legal claiming show strong and sometimes very emotional responses to situations that engender feelings of unfair treatment. Researchers have reported an especially sharp increase in the strength of reactions among those who rate their experiences as very unfair. There is evidence that people who feel they have been treated very unfairly are inclined to ignore their own self-interest and engage in "vendettas" or other antisocial activity against the agency or organization that that they believe treated them unfairly (Giacalone and Greenberg, 1997; Lind, Greenberg, Scott, and Welchans, 2000).

There is already research that suggests that perceptions of experiences affect reactions to regulations, including good evidence that people are sensitive to their experiences with regulations and regulatory hearings. Research in OECD countries on perceptions of regulatory quality found that experiences with regulation and frontline service can account for a significant degree of business and citizens' dissatisfaction with regulation. This experience is often more negative than might be suggested by the measurable costs of administrative burdens (OECD, 2012). For example, according to the 2009 Action Programme for Reducing Administrative Burdens in the EU, "the degree to which businesses consider an information obligation to be irritating (irritation factor) is very often uncorrelated to the administrative burdens imposed" (European Commission, 2009, p. 5; see also OECD, 2010). And unfortunately irritating experiences are often more memorable than those linked to benefits (UK Department for Business Innovation and Skills, 2009). Denmark identified in their "Burden Hunter Project" unfairness as a key driver of irritation for business (MindLab, 2008)

In the academic literature on the psychology of procedural fairness, scholars sometimes differentiate between the fairness judgments prompted by various aspects of the process, distinguishing "interactional justice" and "informational justice" from "formal procedural justice" (e.g., Cropanzano, Byrne, Bobocel, and Rupp, 2001; Konovsky, 2000). These distinctions turn on whether it is the nuances of interpersonal interaction with the administrator, the adequacy of the information provided, or the formal procedures governing the interaction that are being judged as fair or unfair. While there is research evidence that sometimes one or another of these types of process justice has greater impact, it is very clear that all of these varieties of fair treatment are very strongly connected in the minds of citizens. Given that these various types of procedural justice often reinforce each other, the best policy for governments seeking to improve perceptions of fairness would likely be to enhance justice-in-information, justice-in-procedures, *and* justice-in-treatment. In fact, recent research has shown that general perceptions of fair treatment—based on all these types of justice judgments combined—are the strongest and most immediate drivers of the attitudinal and behavioural reactions to fair or unfair experiences (Ambrose and Schminke, 2009; see also Van den Bos, Lind, Vermunt, and Wilke, 1997). All of these subspecies of fair treatment likely combine in the mind of the citizen into global feelings of fair or unfair treatment (Lind 2001). In this report the terms "procedural justice," "procedural fairness," and "process fairness" are used interchangeably to refer to the overall judgment that the process experienced was fair or unfair, unless there is reason to draw on this distinction, in which case terms such as "fairness of procedural rules" or "fairness of interpersonal treatment" will be used.

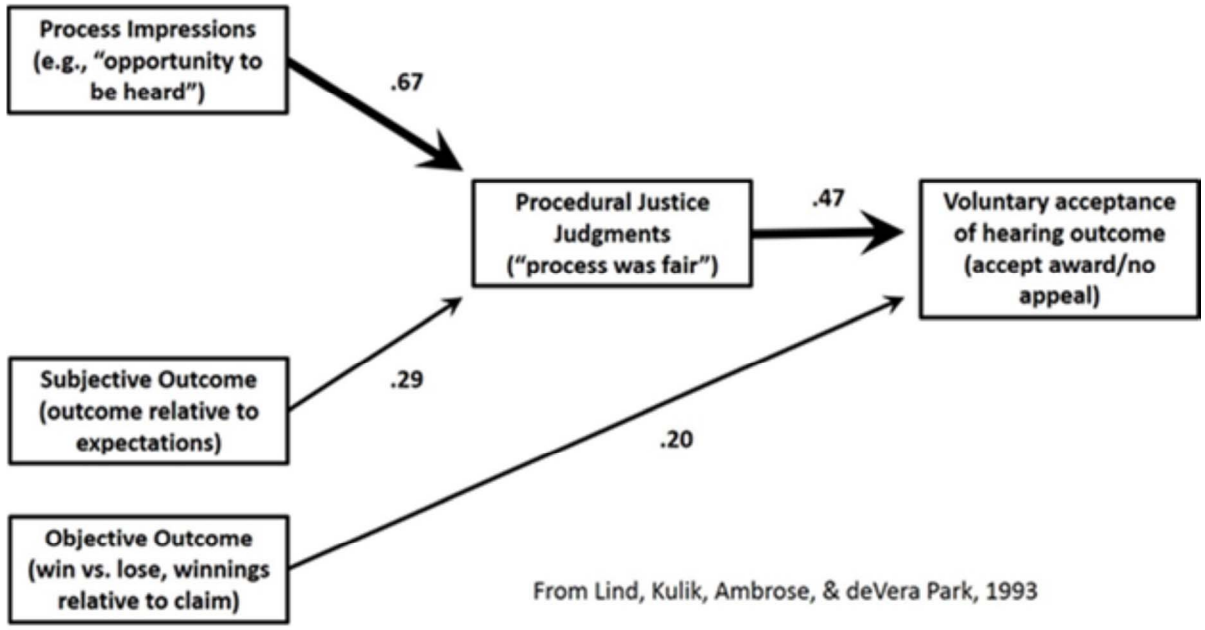
The fair process effect

As noted above, there are practical reasons for paying attention to the perceived fairness of the regulatory process (indeed, we would argue that there is reason to pay attention to perceived fairness any time a citizen has an encounter with his or her government). Perceptions of fair or unfair treatment have powerful effects on the attitudes citizens hold about regulations, laws, and government and can affect behaviours like whether they voluntarily accept the outcome of administrative or legal processes. These behavioural and attitudinal consequences of perceived fairness, which are labelled "fair process effects" (Folger, 1977), have been documented with respect to a number of important follow-on attitudes and behaviours. (See Lind and Tyler, 1988; Tyler and Lind, 1992, and Van den Bos, 2005, for more detailed descriptions of the research literature on the fair process effect.) Fair process effects have been found on many different attitudes and behaviours. Perceptions of procedural justice enhance acceptance of authorities' decisions in courts and other adjudications, increase the likelihood of settlement in dispute resolution processes, and increase satisfaction and compliance with decisions. Fair process effects have also been shown to increase loyalty to leaders, make cooperative action more likely, and increase trust in the decision maker, the government and in justice institutions (see also OECD, 2015c for a more detailed description of the literature on fair process as a driver of trust in justice institutions). And perceptions of fairness in law making and law enforcement have been shown to affect people's general willingness to

obey laws (Tyler, 1990). But just as processes that are seen as fair promote positive reactions to experiences with regulation, processes that are seen as unfair produce a variety of undesirable reactions, including dissatisfaction with the agency and officials encountered, rejection of the decision, distrust in government, and antisocial behaviour.

Figure 1 shows an example of a fair process effect in action. The figure is based on research that examined reactions to a mandatory but nonbinding arbitration procedure in the U.S. federal courts (Lind et al., 1993). The arbitration procedure required civil law cases to go to arbitration, but the process also allowed litigants to reject the arbitration award once it was rendered and demand a full trial.[2] The diagram shows the extent to which several factors influenced perceptions of procedural justice and acceptance of the arbitrator's decision. These factors included how much the litigant won or lost from the decision (measured both objectively in terms of dollars gained or lost and subjectively in terms of where the outcome fell relative to the person's expectations prior to the hearing), the litigant's subjective impressions of the process (ratings of the opportunity to be heard, perceptions of the decision maker's understanding of the case, and evaluations of the neutrality of the decision maker), and the litigant's perception of procedural justice (ratings of whether the hearing process seemed fair to the citizen). The figure shows the results of a statistical analysis that investigated the strength of various cause-and-effect links between the various factors and acceptance of the award; the thicker arrows represent stronger links and the number next to each arrow shows how strong the link is, on a scale of 0 to 1.00. (The analysis technique is termed structural equations modelling; the results reported here are based on analyses of all of the studies reported in the Lind et al., 1993 article. The numbers in the figure are "standardized path coefficient," which can be compared with each other to see how strongly each factor to the left impacts those to the right in the diagram.) As can be seen from the figure, there was a substantial fair process effect: procedural justice judgments were strongly linked to impressions of the process, and acceptance of the decisions was strongly linked to procedural justice judgments.

Figure 1. Fair process and outcome effects on acceptance of decisions



[2]. This "non-binding" feature of the process was part of the innovation because the Seventh Amendment to the U.S. Constitution requires that litigants in federal courts have access to a jury trial if they so choose. For our purposes here, the voluntary nature of the award afforded a very nice test of whether perceived fairness could drive the behaviour of accepting or rejecting awards that sometimes ran to tens or hundreds of thousands of U.S. dollars.

The power of the fair process effect in this study is seen in the percentage of awards accepted by citizens who felt the process was fair or unfair. (Note that the decision to accept or reject the arbitration award had substantial monetary consequences—these cases had thousands and sometimes hundreds of thousands of dollars in dispute and involved very large legal fees.) For citizens who left the hearing feeling that the process was fair, 77% accepted the award and decided not to appeal the decision. For those who left feeling that the process was unfair, only 40% accepted the award. Of course, the objective outcome of the hearings mattered: of those who received good outcomes, 72% accepted the award, while for those who did relatively poorly only 46% accepted the award, but win or lose, those who felt the process was fair were more likely to accept the award than those who felt the process was unfair. The impact of procedural justice judgments on acceptance of the arbitrator's decision was as strong as or stronger than the impact of the outcome of the hearing, a finding that, as noted above, is seen often in the literature on the fair process effect (Tyler and Lind, 1990).

The research literature on procedural justice judgments suggests that the fair process effect is as powerful—and sometimes more powerful—when the person in question receives unfavourable outcomes (Brockner and Wiesenfeld, 1996; Lind and Tyler, 1988, pp. 67-69). In many instances, it is those who lose their case or whose objective interests are harmed by regulation who react most strongly to how fairly they were treated in terms of process experiences. It might seem counterintuitive that a person who has, for example, just lost a tax appeal or a land use decision would be more likely to accept that negative decision if the process seemed fair. This is, however, the clear finding in the literature, documented across a wide variety of settings.

The power of procedural justice judgments to influence reactions even in the face of negative outcomes is thought to be due to the way that people use the quality of their personal treatment as a sign of their inclusion in society (Lind, 2001; Tyler and Blader, 2003; Van den Bos, Lind, and Wilke, 2001). This aspect of the fair process effect is more easily grasped if one considers the how important it is for a citizen who has lost his or her case to find some reassurance that they still have importance as a member of the state. Fairness and inclusion in the process can give that reassurance.

The fair process effect can play out in different stages of the regulatory process. Fair treatment in the hearings, meetings and online consultations used to design regulations including possibilities for all interested parties to be heard provides a way to enhance acceptance of the rule-making process and of the regulations ultimately put forth (See, 2009). In addition, administering regulations, once they are promulgated, and making decisions in ways that enhance fairness considerations can yield fair process effects that promote compliance with specific regulatory decisions. Empirical research has found that people obey rules where the rule has been made fairly, the rule is applied fairly and corresponds to their internal moral value system (Hodges, 2016; Kagan et al., 2012; Friedman, 1975). In either context citizens who perceive their experiences and encounters with agents of their government as fair will tend to trust the government more and see it as more legitimate (Tyler, 1990; 1997).

A caveat is in order with respect to these results and some of the other findings reported in the reviews below of policy studies on procedural justice. True experimental designs (also called "random clinical trials" or "randomized control experiments," see Campbell and Stanley, 1963; Lind, 1985; Lind, Shapard, and Cecil, 1981) are rare in field studies of procedural justice. The Australian policing and restorative justice studies described below are notable exceptions. Most of the policy evaluations of procedures designed to enhance fairness have not used random assignment of cases or individuals to treatment and control conditions. Because of this, it is difficult to infer causal connections from the studies themselves. In studies like those reported by Lind et al. (1993), inferences about the direction of causality rely on the comparability of findings in the field to the findings of laboratory experiments, where random assignment

is routinely used as a research tool. In the laboratory, process impressions demonstrably cause changes in perceived fairness which in turn causes greater acceptance of decisions, a finding seen in numerous laboratory studies (Lind and Tyler, 1988). Randomized experimental designs are often difficult to execute in policy studies on procedural justice because of concerns about consistency or the difficulty in varying process features across administrative cases or across regulatory enactments (Lind et al., 1981). While random assignment in policy research is certainly desirable in future studies, we are fortunate that the combination of strong laboratory science and attention to rigorous *in situ* research methods means we can have confidence that the procedural justice innovations outlined here meet evidence-based policy goals (Lind, 2016).

When does fairness matter most?

Research on procedural justice has revealed some situations that modify how the fair process effect works, and these factors suggest that there are times when it is relatively more important or less important to attend to perceived procedural fairness concerns. For example, there is at least one study that shows that fair process effects are not as strong in situations that involve conflicts between ethnic or political groups (Leung, Kong, and Lind, 2007). Thus one might expect the fair process effect to be less powerful in hearings or procedures that involved interest groups. (That said, there is other evidence, including some of the findings of the Lind et al., 1993, study, that fair process effects do occur with corporate stakeholders.) Perceived fairness is probably more important in regulatory contexts that involve individual citizens interacting with government. Fair process effects also seem to be stronger for ordinary citizens with moderate views than for those who hold deep moral beliefs or those who consider themselves very knowledgeable about the issues under consideration (See, 2009; Skitka and Mullen, 2002).

Thus, for those who are well-informed or very set in their beliefs, it is less likely that fair process effects will affect acceptance and compliance with the decision or trust in government. It is worth remembering, though, that the emotional consequences (pleasure and pain) of perceived fairness or unfairness still play out for people in these groups. That is, fair treatment is still a social reward and unfair treatment still a social cost for those with strong moral beliefs when they interact with the regulatory process. This end-in-itself justification might be sufficient reason to attend to perceived fairness in the design and administration of regulations, even in situations where fair process effects are not strong. Perhaps the best conclusion from our current understanding of how and when procedural justice perceptions matter most is that perceived fairness is never without value, but there are some situations where perceived fairness is especially important. Perceived fairness is thus probably of special value in regulatory contexts where people encounter their government on an individual basis. In regulatory policy this is often in the enforcement phase of regulation. In these contexts, enhancing fair process and perceptions of fair process has the double benefit of being both valuable in its own right (because it protects those who need protection most) and valuable because it can produce fair process effects.

There is another factor that affects when perceived fairness is especially important to people. Psychological research over the course of the past decade has shown that people are especially sensitive to fairness when they are experiencing personal uncertainty or insecurity (e.g., Van den Bos and Lind, 2004). Studies have shown that being treated fairly helps people manage personal uncertainty, even if the fair treatment is in a context different from the one that gave rise to the uncertainty. This research suggests, for example, that if people are uncertain about how the future will play out with respect to their finances or their plans for the future, they will be particularly sensitive to signs of fair or unfair treatment in an encounter with government. Fair processes will calm them down and lead to fair process effects that are especially strong because the person in question is insecure. On the other hand, processes that seem unfair will magnify the uncertainty and insecurity. The connection between sensitivity to fairness and uncertainty implies that regulations that touch on the aspects of people's lives that give rise to uncertainty or insecurity are especially good targets for fairness-oriented reforms. Thus, regulations that govern things like access to

health care or that touch on major life events (such as birth, employment, marriage, divorce, or death) are likely to prompt stronger fairness reactions, for good or ill. Similarly, regulations that address a person's identity (e.g., immigration, citizenship) or inclusion in their community (districting or zoning regulations, for example) are also likely to prompt strong fairness reactions. Although there is no strong research on the issue, some theorists (e.g., Lind, 2011; Lind and Van den Bos, 2002) argue that fairness might well matter more in times of financial crisis or social change. In these situations, procedures that give people a feeling of being included in the design of regulations and treatment that enhances perceptions of fairness in the administration and decision-making are likely to produce the greatest benefits in terms of acceptance of decision, cooperation with authorities, and trust in government.

III. FAIRNESS IN REGULATORY POLICY

Feelings of fair treatment can play a role in virtually any context in which citizens interact with their government. In the realm of regulation, such interactions occur for the most part in two settings: when governments seek citizen input on proposed regulations and when citizens encounter enforcement actions, hearings, and appellate procedures as regulations are administered. In either of these categories of citizen engagement with regulation, perceptions of fairness can be improved by procedures and official behaviour that promote perceptions that citizens' views have been heard and considered, that they have been treated with dignity and respect, and that they received honest and helpful explanations. The great bulk of policy research on perceptions of procedural fairness and fair process effects has been done in the context of the administration of regulations; the study of how experiences with comment processes and pre-promulgation meetings or hearings engender perceptions of procedural justice or injustice has only just begun.

Fair process in the administration of regulations

The nonbinding arbitration program that provided the data in Figure 1, provides an example of how variations in the *administration* of laws and regulations can affect citizen reactions. The procedural differences that gave rise to variations in perceived fairness in the arbitration hearings, which then drove the fair process effect, were variations in procedures for the processing of cases prior to trial. The research study showed that greater acceptance of the decision—and fewer appeals from the procedure—occurred when the enactment of the arbitration procedure and the actions of the arbitrator left the litigants feeling that their case had been heard, that the case was in the hands of a competent decision maker, that they understood what was happening, and that they were treated with dignity and respect. As the process impressions became more favorable, perceived fairness increased; and as perceived fairness increased, acceptance of the arbitration decision rose as well. As noted above, different fairness perceptions in the arbitration study were caused by natural variations in process and behavior, not by random assignment to different conditions. Because there was no randomized control comparison, these studies did not definitively prove that favorable process impressions *caused* perceptions of fair treatment or that the fairness perceptions *caused* greater acceptance of the arbitrators' decisions. Inferences about cause and effect in the Lind et al. (1993) study were based on the convergence between the policy research findings and the results of previous laboratory experiments that had used randomized experimental methods. (Another federal court-annexed arbitration program implemented at about the same time did use a randomized experimental design, but litigant attitudes were not measured in that program; see Lind and Shapard, 1981.)

There have been other policy innovations that did use randomized research methods and that document the impact of fair process effects. Most of these studies have looked at procedures and behaviour in law enforcement contexts. For example, a randomized control experiment conducted in Queensland, Australia, to study fairness in random breath-testing stops used to enforce drinking and driving laws compared "business-as-usual" police methods to methods specifically designed to enhance perceived procedural justice (Mazerolle et al., 2013). The Queensland Community Engagement Trial (QCET) study involved training police officers to undertake actions that promoted citizen voice, respect, and explanations in an effort to improve the perceived fairness of the breath-testing stops. The experiment showed fair process effects with respect to attitudes about drinking and driving and reported compliance with the police. Motorist stops that were randomly assigned to the procedural fairness condition yielded greater acceptance of the law and greater citizen-reported compliance, compared to stops randomly assigned to the "business-as-usual" condition.

Another Australian law enforcement study used a randomized control experiment to compare the effects of a "restorative justice" conference based on procedural justice principles to traditional prosecution as methods for processing drinking-and-driving cases (Tyler, Sherman, Strang, Barnes, and Woods, 2007). In the restorative justice condition in this experiment, prosecution of cases included sessions designed to foster inclusion in the community and offer voice and respect to the offenders. The restorative justice study found that people whose cases were randomly assigned to the procedural justice condition, compared to those whose cases were processed in the standard way, were more likely to report later that they tried to avoid driving while drunk and that they saw the drinking-and-driving law as legitimate. (The study did not find an effect of the treatment on actual recidivism.) A recent review and analysis of data from multiple studies (Mazerolle et al., 2013) concluded that policing procedures and behaviour designed to promote perceptions of procedural justice increase the legitimacy of the police as well as cooperation and compliance with the police.

Non-experimental research also suggests that fair process effects can enhance legitimacy and trust in government. A recent survey study conducted across 26 of the 28 countries included in the European Social Survey examined the relationship between perceived procedural fairness of the police and measures of legitimacy. In every country surveyed, procedural fairness perceptions were the best predictor of legitimacy (Hough, Jackson and Bradford, 2013). A similar survey in the U.S. added questions on obedience to laws and cooperation with police (Tyler and Jackson, 2013). The American study found that perceived procedural justice was a strong predictor of legitimacy for both the police and the courts, and that legitimacy was strongly correlated with willingness to cooperate with the police and to obey the law. In the American study respondents who had had no recent experience with the police or courts were compared to those who had personal encounters. Among survey respondents with some personal encounter with the police, those who felt they had been treated very fairly were much more likely to endorse the police and courts' legitimacy than either those who had not encountered the legal process or those who felt unfairly treated in a recent encounter.

The findings of these studies resonate well with the OECD Best Practice Principles on Regulatory Enforcement and Inspections (OECD, 2014b) which highlight the importance of fair process for enforcement and inspections including clarity of rules and process.

Policy studies in areas other than law enforcement have shown similar fair process effects. Recently the Dutch "Fair Tracks" program, described in more detail below, made a number of changes in the administration of regulations in an attempt to improve the procedural fairness experienced by citizens who encounter the Dutch government in various contexts (see, e.g., Euwema, van der Velden, and Koetsenruijter, 2010; Herweijer and Lunsing, 2011; Marseille, Tolsma and de Graaf, 2013; Marseille and van der Velden, 2014; Ministerie van BZK, 2013; Van den Bos, van der Velden, and Lind, 2014; van der Velden, Koetsenruijter and Euwema, 2010). These changes were implemented across a wide variety of

settings in which regulations are administered or enforced and decisions are made. The Dutch program encourages pro-active personal contact and engagement by administrators and hearing officers in order to promote such fairness elements as voice, better explanations, and respect. (We describe below the specific elements of process and action that make people feel fairly treated.) Survey responses from citizens who had been involved in administrative hearings showed that citizens who felt their treatment was very fair were more likely to trust that the ultimate resolution of the case would be enacted and were more likely to forego the opportunity to appeal the administrative decision (Van den Bos, Van der Velden, and Lind, 2014). Both citizens and administrators gave the new informal procedures high marks (Van den Bos et al., 2014; Van der Velden et al., 2010). There is also evidence that suggests (but could not prove, since the research did not employ a randomized experimental design) that the perceived fairness engendered by the program produced fair process effects on acceptance of decisions and trust in government (Van den Bos et al., 2014). Finally, relevant to the discussion above about including both objective and subjective criteria for good regulation, legal analyses showed that there was no diminution of the legal quality of decisions (Marseille et al., 2013).

Fair process effects were also seen in a survey of citizens who had experienced one of several procedures used to regulate land use in the U.S. state of Florida (Tyler and Markell, 2010). The research examined the impact of a variety of demographic, psychological, and political factors (including party affiliation, race, age, role in the dispute, outcome of the procedures and perceived procedural justice) on evaluations of the procedures and acceptance of the decision. Procedural justice judgments consistently showed stronger correlations with evaluations of the process and acceptance of decisions than did any of the non-fairness factors, including party affiliation and how favourable the outcome of the procedure was for the citizen. The perceived probability of winning in a dispute was a statistically significant factor predicting the acceptability of two of the five procedures, but perceived procedural justice was a significant factor predicting the acceptability of all five procedures.

All of these studies provide real-world support for the idea that including procedural justice elements in the administration of regulations is a good way to improve citizens' experiences in encounters with their government. This in turn produces fair process effects that produce greater acceptance of hearing or enforcement outcomes, more cooperation with law enforcement and other government agencies, greater legitimacy of laws and agencies, and stronger trust in government. In the innovations described in this section, efforts to improve perceived fairness involved implementing a number of process improvements, sometimes simultaneously. Some changes were designed to offer better voice opportunities (e.g., relaxing strict rules of evidence to allow officials and agencies to consider the citizens' views and values, making the process less intimidating, or training officers to listen to and acknowledge citizens' views). Other changes were aimed at providing better explanations of processes and decisions (e.g., by offering "road maps" of procedures that are unfamiliar to laypeople or by providing comprehensible explanations for why the agency or officer made the decision he or she did). And finally, some of the changes involved making special efforts to treat the citizen with consideration and respect (e.g., showing respect through words and body language or by engaging in conversation about relevant, but not contentious, issues).

Fair process in the design of regulations

Fair process effects like those that result from perceptions of fair treatment in the administration of regulations would be expected also when there is public involvement in the hearings or comment processes that are used to design regulations. As noted earlier, there is very little research on procedural justice effects in the design of regulations. The studies that have been done used weaker research designs than the randomized control design used, for example, in the Australian law enforcement studies.

See (2009) investigated procedural justice reactions in rulemaking (environmental restrictions designed to lessen water pollution and regulations governing student loans) in three studies. Her research involved two laboratory experiments and one correlational study examining reactions to actual policy hearings. The findings of her studies, including the actual policy study, showed that perceptions of fair rulemaking process affected acceptance of the regulation that was ultimately mandated. The fair process effect was not the same for all stakeholders, however. Perceptions of fair process affected acceptance of, and support for, the regulation more for stakeholders who felt they had less substantive knowledge about the policy; fair process effects were weaker for those who felt they had more knowledge. (These studies were mentioned in the earlier discussion about when fairness matters most.)

While meetings and hearings designed to engender feelings of procedural justice *theoretically* promote acceptance of regulations, sometimes the reality of the process or its enactment falls short of this goal and this can cause problems. For example, in the U.S. state of North Carolina a series of stakeholder meetings on environmental issues were designed to gather input on new regulations controlling pollution in a river system (Maguire and Lind, 2003). The policy makers who held the meetings hoped that the meetings would lead to feelings of voice and fairness and thus would enhance acceptance of the regulations ultimately decided upon. However, interviews with citizens who attended the meetings suggested that many did not see the process as fair. They felt that the hearings were held on too short a timetable and that there was not enough time for participants to digest and react to the rather complicated information and environmental issues involved. Because of a tight schedule for the regulatory design process, the rule-making agency took a very directive role in the meetings, which in turn appeared to lead participants to feel that a specific set of regulations had already been selected. This counteracted any fairness advantages of the process and negated any fair process effect that might otherwise have resulted from the new hearing process.

The shortcomings of the North Carolina meeting process offer a caution not only for attempts to bring procedural fairness to the process of designing and enacting regulations, but also for attempts to enact fair procedures in the administration of regulations. What counts is whether the process *as enacted* engenders perceptions of fair treatment. The intentions of the program designers in the North Carolina process, which seemed to those doing the research to be sincere, did not count for much against the perception that the process was simply pro forma.

The North Carolina experience carries another message. It is of course important to ensure that stakeholder consultation is not undertaken just to "tick a box". A recent survey of OECD members finds that OECD countries are clearly paying increasing attention to various ways to engage stakeholders in the design of regulations. Yet, consultations often occur too late in the process to inform decision making. Expectations might be raised, but not always necessarily met. Stakeholder engagement seems to be still largely used for transparency purposes rather than evidence gathering (OECD, 2015a, Alemanno, 2015). Furthermore, "stakeholders need to be educated to the engagement culture to increase the likelihood that their voice is heard. They need to be better informed on when and why they might have a chance to influence governments' decisions. In addition, governments have to put in place the conditions for increased trust in the engagement process by providing sufficient feedback and by preventing that consultations are captured by strong lobby groups and special interests." (OECD, 2015a, p. 67)

It is unfortunate that there has been so little research on perceived fairness in the process by which regulations are made. There have been quite a few recent innovations in the regulatory process that have been intended to enhance stakeholder participation and engagement in the process of regulatory design (see, e.g., recent OECD expert reports by Balla and Dudley, 2014, and Alemanno, 2015). Social media and other internet technology is being used increasingly in attempts to improve engagement and to drive the positive attitudes and behaviours that have been linked to procedural justice in other contexts. It is instructive that of the various reasons set out on the U.S. government's citizen comment website

"regulations.gov" for why public participation matters, the very first is related to a fair process effect. Participation is said to matter because "Participation in rulemaking lends democratic legitimacy to regulatory decisions" (Fact Sheet—Public Comments Make a Difference, regulations.gov, 2014). Sadly we lack research evidence to support such assertions.

Evaluations of consultation systems can help to identify areas for improvement including aspects related to perceived fairness. Only seven OECD countries have evaluated the functioning of their consultation system in practice (OECD, 2014a). For example, Switzerland evaluated its consultation and hearing system in 2011, identifying weaknesses such as too short time limits for hearings and short-comings in the communication of its hearing results (Swiss Parliamentary Control Commission (2011). The European Commission's evaluation of its consultation practices (2012) included recommendations to improve follow-up and feedback to participants. Both Switzerland and the European Commission involved participants of consultations in their review.

Especially as we move to greater use of "e-government" technologies—technologies that are intended to offer greater input and participation by citizens—it is important to remember that communication must flow both ways for fairness benefits to be realized. As we will see in the next section, fairness is not just a question of having an opportunity to exercise voice and input comments. Perceptions of fair treatment depend also on evidence *from* the regulatory body that citizens' views have actually been considered. In addition, it is important that the government's actions and its messages about regulations be designed to provide clear and useful explanations on how processes work and how decisions are made.

IV. PROCESS ELEMENTS OF PROCEDURAL JUSTICE

Three general elements of process and behaviour stand out in terms of their impact on whether a citizen will feel fairly treated in his or her interactions with government. Each of these three—voice, polite and respectful treatment, and explanations—will be discussed in some detail in this section. In addition, two other topics that do not fit into these three factor categories will be addressed here because of their potential for improving perceived fairness in regulatory settings. The first of these has to do with what we know about how to make the *practice* of procedural justice more effective in engendering feelings of fair treatment. The second issue concerns the need to assure citizens of the integrity and competence of government officers and agents.

Voice

The first research demonstrations of procedural justice and fair process effects were laboratory experiments and surveys that focused on comparisons of procedures that did or did not guarantee people a chance to present their views (e.g., Folger, 1977; Tyler and Caine, 1981; Walker, Latour, Lind, and Thibaut, 1974). This element of process fairness—termed "voice" in the research literature—remains the most extensively researched and arguably the most powerful antecedent of perceived procedural fairness. Innovations that enhance voice have great potential to improve justice perceptions and thus to generate positive changes in attitudes and behaviour. However, research on voice makes it clear that it is not enough just to allow for more raw input or comment: There must also be some indication that the input was actually given consideration.

To understand how voice works in enhancing perceived fairness, it is important to understand not only what voice is, but also what it is not: Voice is not direct control over the decision, nor is it simply a right to comment. With respect to the first of these points, having voice does not mean that the person in question has a vote or a veto with respect to the final decision. Procedural justice studies have shown that perceived fairness is improved by the opportunity to express one's views to a decision-maker, even when the ultimate decision is clearly contrary to that advocated when voice is exercised (Lind, Kanfer, and Earley, 1990; Lind and Tyler, 1988; Thibaut and Walker, 1976).

This distinction between voice and outcome control (or the expectation of outcome control) has been investigated extensively. Much of the early research on the psychology of voice consisted of studies testing whether voice could enhance perceived fairness *even when it does not lead to better objective outcomes* (see Lind and Tyler, 1988; Thibaut and Walker, 1976, Tyler and Caine, 1981). These studies showed that voice is valued for its own sake, not because of what it might accomplish. In fact, there are studies that show lower fairness ratings for citizens who have received favourable material outcomes without voice than for those who have received unfavourable decisions with voice (e.g., Walker, LaTour, Lind, and Thibaut, 1974)! This early line of research culminated in a laboratory experiment by Lind et al. (1990) that showed that voice enhances procedural justice judgments and leads to fair process effects even in when the opportunity for voice is given *after* the decision has been made.

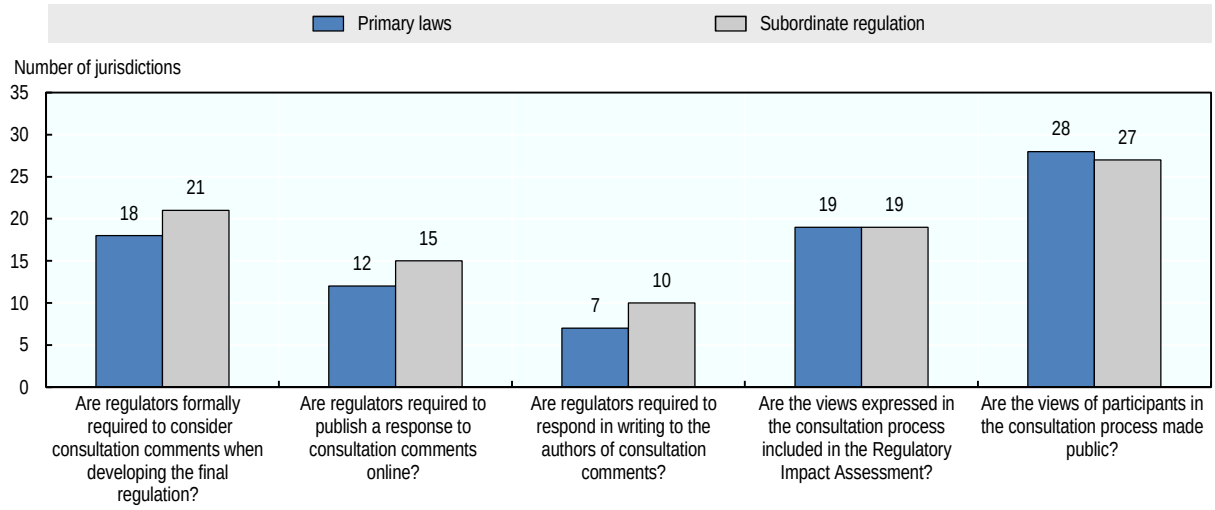
But voice does not improve perceived fairness if it is simply an opportunity to comment without response or reaction from the agency or decision-maker. As the research literature on voice has developed, it has become clear that voice effects occur only when there is reason to believe that voiced views have been considered by the person or agency that is making decisions (Tyler, 1987; Shapiro and Brett, 1993). For fairness benefits to be realized, there must be some evidence that what is voiced has been considered, and this must be shown by some action on the part of the decision-maker. What is needed in any regulatory innovation that seeks to use voice to enhance perceived fairness is some way to show that the voiced views have been "processed." Again, note that this is not the same as having one's voiced views accepted—a decision maker, or an agent of regulatory administration, can show that he or she has heard and understood the views the citizen has voiced but still render a decision contrary to what the citizen wants. Without some obvious indication that voiced views have in fact been considered, voice does not improve perceived fairness.

Note that the need for there to be evidence of consideration means that the comment meetings and on-line comment opportunities sometimes used in the process of designing regulation might fail to instill a sense of voice. As noted earlier, we do not have any empirical evidence on this point in the context of regulatory comment processes, but concern seems warranted based on extrapolation from voice effects in policy contexts that have been studied. To be able to speak at a hearing or to be allowed to write one's views on a web site or in a letter only fulfills half of what is needed for voice to enhance perceived fairness. For a comment process to provide a sense of voice and thus to have positive consequences for perceived fairness, the other half of the process is needed. There must be some indication that the comments have been considered. In regulation-design contexts providing the consideration aspect of voice might require that regulators be proactive in providing those who comment a report on the views expressed, how they were considered, and whether and how they were incorporated into the regulation. It is likely that the mere existence of such a report is not enough to create the perceived fairness benefits provided by providing citizens voice, the regulators must work to make sure the citizens who comment are made aware that their views were considered.

Figure 2 illustrates obligations in OECD countries to provide feedback on consultation comments. In twelve OECD countries regulators are required to publish a response to consultation comments online with respect to the development of primary laws. Such a requirement exists in fifteen countries for subordinate regulations. In only a few countries (seven for primary laws and ten for subordinate regulations), though,

do regulators respond directly to those making comments. This takes the form of individual answers to each author of consultation comments in only four countries for both primary laws and subordinate regulations in other countries a summary responding to most important or significant comments is published online.[3]

Figure 2. Obligation to provide feedback on comments



Note: Based on data from 34 countries and the European Commission.

Source: OECD (2015), *OECD Regulatory Policy Outlook 2015*, p.89, www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

Thus, while there are procedures and rules that mandate consideration of voiced comments in more than half of OECD countries, it seems that individuals making comments often do not "see" this consideration. It is not difficult to imagine that many citizens actually have their voice considered without knowing that their views were incorporated into the design of regulations. Thus in some cases the online comment procedures open to all citizens might be an example of justice done, but not justice seen to be done. Note that it is likely that those most knowledgeable about any given regulation—lobbyists and interest groups, for example—probably know how to find out if their comments are considered, while those who are less knowledgeable might well not know how to access comment summaries or regulatory preambles. See's (2009) research, described elsewhere in the report, shows that it is precisely those who are least knowledgeable who will be most responsive to the fairness impact of voice. For these citizens, who may end up not believing that they have had a real opportunity to exercise voice, the perceived fairness benefit of voice will not exist and the follow-on benefits of greater acceptance, compliance, and trust in government will not occur.

Of course depending on the number of submissions in comment procedures, it can be too resource intensive to contact each respondent separately with individual explanations. It seems feasible though to proactively notify respondents of the availability of an online report that summarises the results of the comment process and responds to the most significant comments in a way that is understandable to citizens.

[3]. Country by country data are available online at www.oecd.org/gov/regulatory-policy/indicators-regulatory-policy-and-governance.htm.

In field studies of procedural justice in policy contexts, successful implementation of voice often involves having the government agent or decision-maker solicit comments and engage in a conversation about the regulation or issue to be decided. The agent or decision-maker then responds with either a paraphrasing of the citizen's position or an acknowledgement of the views where the officer describes how the views relate to the law or regulation. For example, the police officers in the Australian QCET random stop experiment asked motorists for their opinions about what the police or citizens might do to reduce crime. Then the officer acknowledged what the motorist had said and either agreed or suggested other actions (all the while maintaining a polite and respectful demeanor; Mazerolle et al., 2012). The rephrasing or recognition of the content of the voiced concerns shows consideration and can activate the perceived fairness impact of the comments. *Again, note that the restatement or acknowledgement need not include agreement with the views expressed.*

As noted below, the other major process factors that enhance perceived fairness often turn on elements of their enactment that can require considerable training and moment-to-moment discretion on the part of the government agent or official in charge of the procedure. Voice can be simpler and a bit more formulaic (but not entirely mechanical, of course). If those affected by the regulation or by an administrative process under the regulation are given an opportunity to voice their views—either directly or by their representatives—*and* if the basic position is paraphrased accurately and impartially by the officer to show that he or she has listened and understood, then the key elements of voice will have been enacted. The communication cannot be one-way; the regulator has to make sure the citizen sees evidence of consideration of his or her views. Sometimes this "consideration" aspect of voice can be melded into other aspects of procedural fairness. For example, if the explanation of the decision (see below) includes mention of the key issues raised in the voice part of the process—even if the mention includes a respectful discussion of why the decision cannot fit the citizens' view—it is likely the citizens involved will feel that they have been heard.

Current thinking in the psychology of fairness is that voice promotes perceived fairness because it provides a powerful signal that the person with voice is seen as having sufficient value as a member of the community so that his or her views matter to the design or administration of the regulation (e.g., Lind and Tyler, 1988; Tyler and Blader, 2003). The psychology of voice is most easily grasped in the negative: Consider, from the citizen's point of view, the implication of being denied an opportunity to have his or her views and values heard and considered. The denial of voice sends the message that the state attaches so little value to the citizen that it sees no reason to consider what he or she has to say. However, if time is allocated for voice and sufficient effort is put in to consider the views voiced, there is recognition that the citizen has some intrinsic value to the state. Remember the research finding mentioned above showing that those who receive bad outcomes are sometimes more strongly influenced by procedural justice elements such as voice that are those who receive good outcomes. In the face of a material loss, it means a lot to be able to leave the process with the knowledge that at least one was seen as worthy of being heard.

Polite and respectful treatment

Perceptions of fair process are enhanced when people feel that they are treated politely and with respect in the course of an interaction with government. Perceived respect has been shown to be very powerful in shaping procedural justice judgments. A study in U.S. state courts compared litigants' reactions to four different procedures for resolving civil disputes and found that litigants' belief that their case had been handled in a respectful manner was the single most powerful determinant of fairness perceptions and of preferences for using one procedure over another (Lind, MacCoun, Ebner, Felstiner, Hensler, Resnik, and Tyler, 1990, see also MacCoun, Lind, Hensler, Bryant, and Ebner, 1988). The Danish Burden Hunter project mentioned above found that lack of respect from the public authorities explained an important part of business' irritation with regulations (MindLab, 2008). Some of the regulatory and law enforcement reforms described earlier put considerable emphasis on polite and respectful treatment (see,

e.g., Tyler et al., 2015). In the Dutch Fair Tracks innovation a great deal of effort has been put into training officials to treat the citizens involved with respect and politeness (Euwema, Van der Velden, and Koetsenruijter, 2010). The Australian QCET random stop experiment provides another example of behaviour that was designed to enhance procedural justice reactions by promoting polite and respectful treatment. In designing the fair treatment condition in the QCET study, the researchers and police worked together to design a "script" that would modify standard police practices in ways that promoted perceived procedural fairness. They decided that respect could be conveyed by paying special attention to polite language and having the officer crouch down when he or she spoke to the seated motorist (to bring the officer's face to eye level for the motorist). As noted earlier, these and other elements of fair process did enhance feelings of fair treatment and increased acceptance of the law and compliance with the police (Mazerolle et al., 2012).

It is important to remember that what constitutes polite and respectful treatment varies from culture to culture and from one context to another. In addition, because the behaviours involved in this element of procedural fairness are so nuanced, the government officials and agents who are enacting the process should receive adequate training and find ways of performing the respect-conveying behaviours that fit their own personal styles. There is evidence that training programs can be successful in raising levels of politeness and respect: a randomized control study of police training in Chicago (Schruck and Rosenbaum, 2011) demonstrated the value of procedural justice training, showing how fairness training can affect the subsequent attitudes and behaviours of officers. The QCET procedural justice innovation described above not only included police officers in designing the procedural justice condition, it also encouraged police officers to find and rehearse polite behaviours that fit their own style as part of the preparation for the procedural justice condition in the experimental random stop study. The Dutch Fair Tracks program included a training component as well as the creation of a variety of extremely clever and useful tools designed to help administrators understand how they can enact respectful and polite treatment (Euwema et al., 2010; Ministerie van BZK, 2013).

Why do people place so much emphasis on respect and politeness as they decide whether they have been treated fairly or not? As noted earlier, theorists believe that the reason that feelings of fair treatment affect so many different attitudes and behaviours is that people generally interpret fair treatment as an indication of whether they can cooperate without fear of being excluded or exploited (Lind, 2001; Van den Bos et al., 2001, Tyler and Blader, 2003). For this reason fairness judgments are likely to be based on elements of process and treatment that seem reasonably linked to inclusion and safety. Polite and respectful treatment, like voice, carries the message that one is in fact a valued member of the state, and for this reason respect produces perceptions of fair treatment. These rather abstract theoretical considerations turn out to have important practical implications, since they tell us something important about what parts of politeness and respect are likely to be most important: Elements of behaviour and process that convey inclusiveness and solidarity are likely to matter most in the perceived fairness of procedures (Tyler et al., 2015).

Explanations

The provision of explanations about the regulatory or administrative processes and about the reasons for decisions enhances procedural justice judgments (see, e.g., Bies and Moag, 1986; Lind et al., 2000). Explanations are thought to enhance perceived fairness for the same general reason as the other two major elements of procedural justice: Honest, comprehensible explanations give the citizen reason to believe that his or her participation in the process is real, that he or she is being treated like someone worthy of receiving the information needed to navigate the process and understand decisions.

Those who design and administer regulations, and who deal with regulations and administrative decisions every day might forget that most citizens are unfamiliar with the regulatory process. Even well-educated people often have only an abstract understanding of how regulatory hearings work, how a given regulation is to be applied, or how decisions are made and enforced. To be put into a situation where one does not understand the rules can be extremely frustrating, and more than a little alienating. Lack of explanation invites attributions of bias or arbitrariness as the citizen or stakeholder tries to understand what has happened and why. Indeed, in a U.S. study of compliance with and litigation against employment termination decisions, employers who were seen as not providing honest explanations for the reason for dismissal were seen as much less fair (and were ten times more likely to be sued) than were employers who provided explanations (Lind et al., 2000). In the law enforcement policy studies described earlier, explanations were a key part of the procedural justice treatment. For example, in the QCET drinking and driving experiment described above, the very first element of the "script" for the procedural justice random stops was an explanation that the stop was in fact random (and not a result of the driver's behaviour). This explanation was followed by of the officer explaining why the stops were being done and how the process would work. The explanation concluded with the police officer offering to answer any questions the driver might have about the stop. A study of the UK Department for Business and Innovation and Skills (2009) showed that citizens and business felt there was not enough information on the benefits of regulation reaching them, and that if there was a greater dialogue around the reasons for specific rules these might be more readily accepted.

Theorists in social and organizational psychology have called attention to a strong need that people have to make sense of their social surroundings (see, e.g., Weick, 1995; Van den Bos and Lind, 2013). As noted earlier, fairness judgments are one way that people judge whether they can trust and cooperate without worrying about being exploited or excluded—a key part of understanding any social situation—so it is hardly surprising that feeling one has received an honest explanation contributes substantially to feelings of having been treated fairly.

In practice the key features of explanations, as they contribute to perceived fairness, should involve an explanation of how the process will play out, a description of what the decision criteria are, and an account of how the decision-maker will go about making his or her decision. "Road maps" of processes and alternatives are valuable information for citizens, as are statements about the timing of various events and who will speak when. When decisions are made, some explanation of the supporting law and the interpretation of the evidence, even if this disagrees with the citizen's own views, is needed, since this will make the underlying rule clearer and future decisions more predictable. A research report by the Australian Productivity Commission (2013) highlights the importance of formal documentation, publishing and explanation of key decision making processes.

The importance of explanations can also be found in OECD best practice principles: Principle 9 in the OECD Best Practice Principles on Enforcement and Inspections (2014b) highlights that governments should clearly inform those affected by inspections of what rights and obligations they have in the inspection process, how to challenge and appeal the conclusions if relevant and how to obtain compliance assistance, or report abuses if any. Governments should also clearly inform those who have to comply with regulations through all available media and channels on the enforcement and inspection framework regulations. And Principle on Accountability and Transparency in the OECD Best Practice Principles on the Governance of Regulators (2014c) emphasises that all major decisions made by a regulator shall be accompanied by publicly stated reasons and that key operational policies and other guidance material, covering matters such as compliance, enforcement and decision review, should be publicly available.

The timing and practice of procedural justice

The "big three" elements of fair process—voice, respect, and explanations—can, and probably should be combined into an overarching fair process in the design and administration of regulations, and there are

some additional studies and policy innovations that suggest how exactly this can be done most successfully. First, there is research that shows that in perceived fairness first impressions are very important. Two studies, one in the laboratory (Lind, Kray and Thompson, 2001) and one in the field (Janson et al., 2008), show that if one's first encounter with a process or an authority seems fair, that early experience will colour the interpretation given to later experiences and encounters. A positive first impression will predispose a citizen to interpret later experiences as fair, while a negative first impression will predispose him or her to view later experiences with suspicion.

Box 2. The Dutch Fairness Initiative

As noted earlier, the Ministry of the Interior and Kingdom Affairs of the Netherlands instituted a "Fair Tracks" program designed to increase accessibility and perceived fairness of administrative procedures and hearings (Euwema et al., 2010; Herweijer and Lunsing, 2011; Marseille et al., 2013; Marseille and Van der Velden, 2014; Ministerie van BZK, 2013; Van der Velden et al., 2010). The innovation is also known as the "Informal Proactive Approach Model"; in Dutch "Prettig contact met de overheid". In the Dutch program informal contact is initiated if a decision is about to be made that goes against a citizen's interests or if a citizen files an appeal or contests a decision. The official asks the citizen something along the lines of "can you please explain your complaint or issue to me?" following up with additional questions about what aspect of the issue is most important to the citizen. As this initial interaction proceeds, the official can explore the citizen's complaint or problem more fully, at the same time enacting all three of the major elements of fair process. For example, the official can paraphrase the citizen's concerns (showing voice and consideration), explain the process and the decision criteria, and be careful to show concern and respect. The expectation is that this initial experience with the administrative agency, and other positive experiences later in the process, will engender strong feelings of fair treatment.

Some details about the Fair Tracks program are set out in a recent research study on how it is received (Van den Bos et al., 2014): "Fair Tracks is a policy and research programme run by the Dutch Ministry of the Interior and Kingdom Relations. This constitutes a new approach to making decisions and handling conflicts. Unlike more traditional, formal, and mostly written ways of making administrative decisions and handling complaints or objections, in the Fair Tracks programme the public official engages in a direct and interpersonal conversation with the citizen who has filed a complaint or an objection or who is about to receive a negative decision. The public official typically does so by phone, preferably within 2-10 days after receiving the complaint or objection or when a public official is about to make a negative decision. The purpose of the open communication that follows is to discuss together what the problem is (focusing on the facts, emotions, and interests involved) and how the citizen's problem can best be handled (pursuing a solution-driven approach)" (pg. 1), and "… the General Administrative Law Act intentionally provides room for informal contact and interactions between public officials and citizens. Furthermore, the law has a number of provisions to ensure that the government does not misuse its powers and cannot put aside a complaint or objection against a decision (e.g., the government has to provide a hearing when citizens want that). The law also includes provisions to make sure that cases are looked at seriously and are handled professionally and neutrally (e.g., the government official handling a complaint or objection cannot be the one who made the decision in the first instance). The law never intended these procedures to be formal and mostly written executed procedures. On the contrary, informal interventions and a solution-driven approach was intended by the General Administrative Law Act. This noted, what is quite common in the execution of the General Administrative Law Act is that lawyers do not informally contact citizens but limit themselves to executing the few legal provisions in the law such as sending out written letters upon receiving complaints or objections. Thus, in practice (but certainly not out of principle), the execution of procedures following the General Administrative Law Act tends to be more formal than the direct and explicitly interpersonal interactions employed during the Fair Tracks programme. This is an important reason why we sometimes refer to the execution of procedures of the General Administrative Law as being more formal than the explicitly informal treatment employed during the Fair Tracks programme" (Footnote 2).

Research that included surveys of citizens who have had experience with the process has shown that this approach is well received: Van den Bos et al. (2014) found that a vast majority of the citizens gave the process either a "fair" or "very fair" rating. As noted above, the positive fairness judgments prompted by the Fair Tracks innovation also appeared to exert fair process effects on a variety of other attitudes about the experience, the decisions, and the government. The Fair Tracks program evaluation did not use a randomized design, so inferences about the consequences of the innovation are subject to the caveats that attach to any policy evaluations that do not use that method. One cannot say with scientific certainty, for example, that the innovation *caused* the positive attitudes and behaviours. That said, the Ministry estimates substantial savings (€100 million annually) were realized by virtue of citizens foregoing the more formal (and more costly) appeals procedures of the previous programme.

As the regulatory or administrative process unfolds, various elements of fairness can be enacted with each element reinforcing the others, so that the entire experience prompts quite strong feelings of fair treatment. The Dutch "Fair Tracks" program, described in the section on "The Dutch Fairness Initiative," offers an example of how this can be done in the administration of regulations and in decision making about potential violations of regulations.

As the regulatory or administrative process unfolds, various elements of fairness can be enacted with each element reinforcing the others, so that the entire experience prompts quite strong feelings of fair treatment. The Dutch "Fair Tracks" program, described in the section on "The Dutch Fairness Initiative," offers an example of how this can be done in the administration of regulations and in decision making about potential violations of regulations.

The QCED police stop and the restorative justice experiments in Australia offer additional examples of how procedural justice elements can be blended to create innovations that enhance perceived fairness (Mazerolle et al., 2012; Tyler et al., 2007). As mentioned above, in the QCED procedural justice condition, the first actions of the officer after a stop were carefully crafted and the officers were trained to make sure that explanations, respect, and voice were part of the experience from the start. Early fairness experiences are likely to prompt more cooperative behaviour as the encounter unfolds, as demonstrated by the policy innovations in the Netherlands and Australia. Studies examining the impact of the Fair Tracks program and the two Australian programs found that fair treatment predisposed citizens and defendants to be more cooperative. This suggests that the innovative procedures not only made the experience feel fairer after the encounter is over, they can also engender attitudes early in the encounter that make people more cooperative and make the process more effective in finding better solutions.

There is a reason that early experiences exert especially strong impacts on the ultimate perceptions of fairness engendered by an encounter with government. We have argued that for most citizens any encounter with government regulation places them in a social setting well outside their day-to-day experience. Recall that psychological research shows that uncertainty makes people particularly attentive to signs of fair or unfair treatment. Citizens, unfamiliar with how administrative processes work, might well be uncertain at the outset of any encounter with government about whether they will be treated fairly. As they process information in what is for them a novel context, any procedure or behaviour that appears to carry information about fairness will be seized upon and used to guide their behaviour throughout the encounter. As noted above, there are a number of studies showing that early fairness impressions can colour the interpretation of later experiences, so that subsequent events or experiences can have entirely different meaning depending on whether they are encountered with a pre-judgment of fairness or unfairness. For example, an unexpected wait to see an agency official might be viewed as indicating disrespect for the citizen if the person's early treatment by the official seemed unfair, while the same wait might be viewed as an entirely understandable consequence of careful processing of others' cases if previous interactions with the official had included voice, respect, and explanations.

One last point bears mention again in this context. The need to blend various elements of fair process, sometimes on an ad hoc basis, points to the importance of comprehensive training for those who will interact with the public. Objectively, it is of course necessary to train hearing officers and government agents to administer the law in a competent, consistent, and even-handed fashion. But it is also necessary to train those who administer regulatory procedures to explain the process and rules in ways that take into account to whom they are speaking and to show that they are listening and respect the citizen. It is noteworthy that consumer-oriented business, which depend for their existence on leaving customers with positive feelings about encounters with the company, spend a great deal of time and money training their sales and support people in precisely the elements of fair process described here (see, e.g., Gallo, 2012).

Training in these issues should also give the official direction when he or she must improvise in any given citizen encounter.

There is a lesson that can be taken from the attention given to nuances of treatment of consumers in commercial contexts. On-going monitoring of reactions help maintain good practices. Follow-up interviews or questionnaires, using methods described in Appendix A, are useful tools for initial studies of the effectiveness of perceived fairness innovations, but they are also useful metrics of continued success of these sorts of policy initiatives. Evidence of a "down-tick" in levels of perceived fairness can be an early warning of a need to re-train administrative personnel or to update existing procedures. It is the nature of perceived fairness that it exists in the mind of the citizen, and it is only by attending to measures of how citizens are reacting that governments can hone and perfect their relationships with those they serve.

Competence, integrity and transparency

A final set of considerations lies at the intersection of objective and subjective fairness. A desire to make sure that the people who administer laws and regulations do so with integrity and competence drives great deal of legal and regulatory process. Similarly, transparency with respect to the process and decision criteria is key to both objective justice and to the perception of fairness. Of course, citizens are not blind to the possibility of corruption or incompetence, and they factor any evidence of either of these problems into their perceptions of the fairness of their experiences (see Tyler et al., 2015 for a discussion of how these factors matter in police-citizen interactions). Evidence of corruption is, of course, a strong barrier to any feeling of fair treatment. In a cross-national study of reactions to self-serving actions of managers in business settings, Janson et al. (2008) found that the belief that a manager was concerned with serving his or her own interests negated any beneficial effect of subsequent fairness-oriented actions on the part of that manager. Janson et al. refer to the perception self-serving versus self-sacrificing behaviour as a psychological "heuristic" or short-cut to trusting or distrusting that person. If an official or authority seems early in an encounter to be interested in his or her personal gain, people quickly come to distrust that person and it is difficult to change that initial reaction. If on the other hand the official appears at the outset to be willing to make sacrifices for the general good, people almost automatically trust his or her motivations. In either event, early selfish or selfless behaviour can often overwhelm later fair or unfair actions. Interestingly, and in line with discussion above about how early experiences can colour the interpretation of later events, fairness judgments can also block concern about self-interest, if fair treatment is encountered first.

The practical lesson from this line of research is that fairness, integrity, and competence should all be part of the citizen's impression from the very beginning, and that transparency is key to assuring that all of these qualities is are seen and appreciated (Buell, Porter, and Norton, 2013). One need only imagine an encounter with an official who demonstrates his or her integrity and competence while at the same offering the citizen voice and consideration, respect, and explanations to see how these two factors can, indeed undoubtedly should, be combined with fairness elements to provide a positive experience with government. And, one need only imagine an encounter with an official who seems corrupt, incompetent, or unfair to see how all three factors are needed. Finally, a lack of transparency, both real and perceived, is likely to undermine feelings of consideration, respect, and understanding and to diminish feelings of fair treatment.

Perhaps it is good to close this report with the reminder that for most citizens encounters with regulatory or enforcement processes constitute key opportunities to glean from personal experience information about whether their government is fair. We know how to build procedures and train officials so that people leave these critical personal experiences with positive fairness judgments, and we know that those fairness judgments will in turn engender both immediate benefits for the regulatory process and more general benefits for legitimacy and trust in government. The knowledge is there, and policy innovations

that take advantage of that knowledge are showing great promise. The challenge now, it would seem, is to expand these innovations and to begin to treat perceived fairness as one of the criteria of good regulatory policy.

V. CONCLUSION

Almost all OECD countries have built systems to improve the quality of regulations, using evidence in the development of regulations and consulting with stakeholders to better understand the impact of planned laws and to reduce red tape (OECD, 2015a). Much of course still needs to be done to properly implement these systems and continuously improve the objective quality of regulations. Yet this is not enough - even when the objective quality of regulations is high, citizens often feel that they are not treated well in interactions with governments in the design, administration and enforcement of regulations, with negative consequences for compliance with regulations and trust in government.

Over the past several decades a lot of research in psychology and policy studies has demonstrated that when citizens feel fairly treated in their encounters with government agencies, they are more likely to accept and comply with regulatory rules and decisions. In addition, perceptions of fair or unfair treatment have been shown to have a substantial impact on whether citizens trust their government and whether they feel included in society. Costs for society can be high when citizens feel unfairly treated and improvements to enhance fairness can generate substantial savings. For example, in the Netherlands, improvements to deal with complaints in the administration to enhance perceived fairness lead to a reduction in the much more costly appeals procedures.

While policy analyses often assume that a citizen's acceptance of any given regulation is determined largely by a citizen's attitudes or ideology about the legitimacy of the government and whether they benefit personally from the regulation, research shows that feelings of fair or unfair treatment often exert as much influence on citizens' acceptance of and compliance with regulations. The conventional wisdom is that those who are advantaged by a regulation will accept it while those who are disadvantaged by the regulation will reject it. In study after study, however, citizens' acceptance of laws, regulations, and government decisions has been found to be strongly affected by whether the citizen believes that he or she received fair treatment in personal encounters with government. This is to the point that some citizens will prefer negative consequences for themselves such as financial penalties over compliance, if they have perceived to have been treated unfairly (Lunn, 2014). The impact of fairness judgments extends to general attitudes about government—numerous studies have shown that perceived fairness of treatment in interactions with government agencies enhances trust in government and acceptance of the government's legitimacy. Thus, regulations that are seen as fairly administered increase legitimacy and trust in government, which in turn further improves cooperation with regulatory processes.

Building on a number of policy studies, this paper demonstrated how careful design of procedures and targeted training of officials and authorities can enhance perceived fairness and produce greater decision acceptance and compliance. In each of these studies, procedural elements and behaviours shown in academic research to improve perceived fairness were built into the processes used to administer laws and regulations and into the way that decisions were made. The improvements intended to enhance *perceived* fairness were designed to avoid any compromise of the *objective* fairness and legal accuracy of regulatory procedures and decisions. Across a number of policy settings, and in a number of different nations, these studies have confirmed that changes designed to enhance perceived procedural justice do indeed improve

greater perceived fairness and promote better acceptance of laws, regulations, and judicial and administrative decisions.

Three factors have been found to exert especially strong effects on whether citizens feel that they have been treated fairly or unfairly in their encounters with government. The first of these factors is "voice"—the belief that one has had an opportunity to present one's case and that decision-makers have considered one's views. When government process and everyday treatment by government officials allow citizens and stakeholders to feel they are heard, perceptions of fair treatment increase. When voice is denied, on the other hand, both the process and the ultimate decision are likely to be seen as unfair. The second factor that drives perceived fairness is whether the citizen feels that he or she was treated with respect and dignity in the course of an encounter with government. When citizens feel that they have been treated with respect in encounters with regulatory agencies or officials, they tend to see the process as fair; when they feel they have been treated disrespectfully, they tend to see the process as unfair. The third major factor driving perceived fairness is providing explanations to inform the citizen's understanding of the process and outcome. When a citizen feels that the process and decision have been adequately explained, his or her perceptions of fairness increase; in the absence of such explanations, perceptions of fairness decrease. Research and theory in the study of perceived fairness suggest that these factors—and the fairness judgments they foster—have such strong effects because feelings of fair treatment summarize whether the citizen feels included in or excluded from government processes, and this in turn contributes to whether he or she feels safe responding as cooperative members of the state. This paper considers, in some detail, existing research on how each of these three factors enhances perceived fairness, with particular attention to how each might be (and has been) implemented in policy contexts.

The term "*procedural* justice" notwithstanding, some of these fairness-enhancing factors (especially respect and explanations) depend not only on formal procedures but also on issues of style and nuances of the behaviour of government agents and officials. To promote perceptions of fair treatment, governments should conduct careful training of officials and ongoing evaluation of how their actions are viewed by citizens and other stakeholders. The policy experiments reviewed here make it clear that changes in process and style can in fact enhance perceptions of fairness and that the resulting increase in perceived fairness does indeed benefit governments and citizens. At the same time, some less successful attempts to enhance perceived fairness in regulatory processes have shown that without careful attention to and monitoring of how regulatory processes are actually enacted, procedural innovations designed to enhance perceived fairness can fail. Monitoring perceived fairness can also provide valuable information for the overall evaluation of the interaction between government and citizens.

Of course *both* the reality of fair and legal treatment *and* the perception of fairness need to be assured. Objective and subjective fairness can work together: studies reviewed here show that by enhancing perceptions of fair treatment governments can improve the efficiency and objective accuracy of regulatory procedures. Processes that seem fair to citizens yield objective benefits by increasing cooperation with the administration of regulations. Successful programs to improve subjective justice must be built upon a foundation of objective justice, however: studies on the basic psychology of perceived fairness suggest that attempts to simulate fairness without actually providing objectively fair procedures tend to provoke very negative reactions when the true nature of the unfair process is discovered.

The knowledge to build procedures and train officials so that people leave personal experiences with government with positive fairness judgments is there, and policy innovations that take advantage of that knowledge are showing great promise. The challenge now is to expand these innovations and to begin to treat perceived fairness as one of the criteria of good regulatory policy. This will engender both immediate benefits for the regulatory process and more general benefits for trust in government and for a cohesive society.

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APPENDIX A

Measuring Procedural Justice

There are two general approaches to measuring whether a citizen feels that he or she has experienced procedural justice. One way to assess perceived fairness is simply to ask some variation on the question "Do you feel that your treatment at the [administrative hearing etc.] was fair. This is termed the direct approach to measuring fairness. The second approach, called the indirect approach, is to ask about various elements that have been found to create positive procedural fairness judgments (compare, for example, the measures used in Ambrose and Schminke, 2009; Colquitt, 2001; Lind et al., 1993). Often the two approaches are used together, so that some questions address the elements of fairness and others address directly perceptions of whether or not one was fairly treated. In this "mixed" approach, responses to all of the items can be averaged together to get a global measure of perceived procedural justice or, if the study requires it, the elements of fairness items can be averaged separately from the direct fairness items to allow testing of specific perceptions of the process.

Perceived fairness is usually measured in a questionnaire or interview. If a questionnaire is used, it can be distributed to citizens involved in encounters with government as they leave the encounter, but more often the questionnaire is mailed (or e-mailed) to the citizen a short time after the encounter. If a personal interview is used to gather data on perceived fairness, it too is usually targeted at citizens with specific experiences. In any survey of perceived fairness, all of the usual (and important) considerations in survey methodology apply. Researchers must be careful to avoid bias from the wording of questions or from the status or demeanour of the interviewer, care must be taken to make items comprehensible, and issues of nonresponse must be factored into the interpretation of the results.

That said, the measurement of perceived fairness and related issues is now a rather settled science. It is not difficult to generate measures that are, in the terminology of research instruments, both reliable (i.e., consistent) and valid (i.e., good measures of the underlying attitude). As noted in the body of the report, people have little problem in giving evaluations of the fairness of the process and treatment that they experienced. In general, policy researchers and academic scholars with training in social psychology, political science, or sociology could use the studies cited here to see how perceived fairness can be measured in any given national or regulatory context. Like all social science measurement (indeed, like all scientific measurement of any sort), there are considerations of context and culture, and nuances wording and survey construction need to be taken into account. This is something that local scholars will be familiar with, though, and should not be a bar to the measurement and monitoring of perceived fairness.

The table below shows some examples, with annotations, of perceived fairness survey items, using items from actual research surveys. The questions are worded so that response options such as these could be used: "Strongly agree" / "Agree"/ "Neither agree nor disagree" / "Disagree" / "Strongly disagree". Additional examples of survey questions can be found in Colquitt (2001), Lind et al., (1990), and Tyler and Lind (1992). Many of the research studies described and cited above also contain verbatim reproduction of the survey questions used in the study, and these survey items can be readily adapted to other contexts.

Perceived fairness has been measured in policy studies and in other research contexts in many countries and many languages. Reliable and valid measures of fairness and the elements that affect feelings of fair treatment have been developed and used, for example, in North America (Colquitt, 2001), Japan (Ohbuchi, Sugawara, Teshigahara, and Imazai, 2005), China (Leung et al., 2007), the Netherlands (Van den Bos et al., 2014), France (Lind, Erickson, Friedland, and Dickenberger, 1978), Germany (Lind et al., 1978), the United Kingdom (Lind et al., 1978), Spain (e.g., Perez-Achechaederra-Perez, Lind, Briones, and

Garcia, 2014), India (Platow, Eggins, Chattopadhyay, Brewer, Hardwick, Milsom, Brocklebank, Lalor, Martin, Quee, Vassallo, Welsh, 2013), Pakistan (Murtaza, Shad, Shahzad, Shah, and Khan, 2011), Australia and New Zealand (Platow et al., 2013; Janson et al., 2008), Ghana (Tankebe, 2009), Nigeria (Sunday, 2014), Saudi Arabia (Moussa, 2013), and other countries. The key to successful measurement of perceived fairness and related concepts lies in careful translation and adaptation of survey items to the local language and context. Van de Vijver and Leung (1997) is an excellent resource on this topic.

Table 1. Examples of measures of perceived fairness and related topics

Direct Measures	"The hearing was conducted fairly"
	"The process was fair"
	"I was treated fairly in the course of the hearing"
Indirect Measures	"I was able to present my opinions" (Voice)
	"The public official listened attentively to my standpoint" (Voice)
	"The public official seemed to consider what I had to say" (Voice)
	"I was treated with respect" (Politeness and respect)
	"I was treated with courtesy" (Politeness and respect)
	"The public official explained what would happen in the hearing itself" (Explanations)
	"The public official explained how the case would be followed up after the hearing" (Explanations)
	"The public official explained why he/she made the decision" (Explanations)
	"The public official was impartial" (Competency and integrity)
	"The public official had prepared well for the case" (Competency and integrity)

APPENDIX B

Optimizing Objective and Subjective Criteria--Revisited

Having considered now which factors are especially potent in determining whether a procedure is seen as fair or unfair, it is worth returning to the issue of how policy makers might optimize objective and subjective criteria in designing and administering regulations. As noted above, there is no necessary conflict between achieving objective criteria of good regulation and also making regulations and their administration acceptable in terms of perceived procedural justice. Indeed, many of the objective criteria that constitute the core desiderata of good design and administration of regulations also have versions in process impressions and perceptions of procedural justice. Thus, issues like neutrality, appellate processes, consistency, citizen participation, efficiency, and competence of the decision maker are all important considerations often used to judge the objective quality of regulatory reform and administration, and these same factors, translated into perceptions of experiences, can also affect what that citizens consider as they form impressions of the fairness of their encounters with government regulation.

However, there are two noteworthy categories of possible "disconnects" between objectively good regulatory process and subjective judgments of the fairness of regulations and regulatory experiences. The first has to do with the possibility that an objective criterion is in fact satisfied but this is not apparent to the citizen as he or she experiences the regulatory process. Sometimes great care might be taken to make sure that citizens have a *right* to comment or to voice their complaints, but this provision of voice might be so embedded in formal procedural rules that citizens either do not know they have the right or do not see how they can exercise it. In a situation like this, the formal provision for voice could not be expected to lead to positive impressions of the process. A related problem arises when, as was noted in section on consultation processes, a well-intentioned government decides that it is enough if the government knows that comments are considered, there is no need for the citizen him- or herself to know that his or her views were considered. Yet another example of a problem of this sort would be seen in an informal process in which a particular administrator was so argumentative or unresponsive that the citizen concludes his or her views were never really considered.

The second category of disjunction between objective and subjective criteria for good regulation arise from the different importance of various criteria when we assess the objective quality of a regulation or regulatory policy and when a citizen assesses his or her experience. The question here is not about a clash of what is seen as good in objective and subjective analyses of the quality of regulatory hearings; rather it is a question of which good element should take priority over which other good element. Thus, in many administrative contexts the consistent application of process rules and timeliness of process are given very high priority because consistency and efficiency are two of the primary objectives of good regulation. But research in policy contexts has shown again and again that citizens give considerations like respect and voice highest priority in their assessments of the fairness of their experiences with the state. These different priorities can lead to regulatory processes that actually reduce acceptance of decisions even as makes those same decisions objectively better.

The North Carolina pollution hearings described above (Maguire and Lind, 2003) illustrates the latter category of clash between objective and subjective criteria. The administrators wanted to gather input in a timely fashion, certainly a laudable objective goal in regulatory design, but in doing so they failed to allow sufficient time for the input to be developed and presented, and they ended being viewed as not really being interested in considering the various views that were voiced. The net effect was no real perception of fairness in the comment process.