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Policing involves potentially one of the most coercive interactions between the State and its citizens. Consequently, understanding the role of legitimacy is a vital issue for modern policing. But what does 'legitimacy' mean for policing and from where does it derive? In this briefing paper, two leading scholars of procedural justice research, Tom Tyler from the US and Tina Murphy from Australia, examine these questions, providing an incisive and accessible summary of the key international research findings. Tom Tyler spent a month as a CEPS Visiting Fellow in early 2011. His coauthor, Tina Murphy, joined Griffith University in 2011 as a CEPS Associate Investigator based in the Centre of Criminology and Criminal Justice. This field of research provides a rich seam of data establishing how citizens' perceptions of justice and fairness at the hands of police impact on their willingness to cooperate and comply with the law. Police who are committed to a procedural justice model are not only likely to be more effective, but also encounter less hostility in the community. Moreover, beyond these tangible benefits, enhancing levels of police legitimacy (and linking policing to the ideals of justice and fairness) is an "unqualified good" in itself!



Professor Simon Bronitt
Director

Procedural justice, police legitimacy and cooperation with the police: A new paradigm for policing

Professor Tom R. Tyler & Associate Professor Kristina Murphy

In recent decades police agencies in both the United States and Australia have made important steps forward in terms of the quality of policing. In fact, the evolution of law enforcement in both of these countries over the last 40 years has been nothing short of remarkable. Policing is currently served by officers who are now better trained, better equipped, and more diverse in terms of gender and ethnicity than at any time in our histories. Further outreach to historically disenfranchised communities and a commitment to engagement with the community have become the order of the day. A recent review of policing by the National Academy of Science in the United States, for example, detailed evidence of increasingly professional and effective police departments and of more and more sophisticated policing practices (Skogan & Frydl, 2004). There is indeed a new professionalism in policing and it benefits all of those people who deal with the police.

These increases in the objective quality of policing notwithstanding, the other consistent finding of studies of the police is that over the last thirty years public support for the police – often indexed as "trust and confidence" in the police – has not increased at a similar rate. The percentage of Americans expressing confidence in the police between 1980 and 2010 has generally ranged between 50 and 60 percent. In 2010 it was at 59% (Gallup, 2010). In Australia, while overall trust and confidence in police is higher than in the US, trust and confidence in police has actually fallen slightly over the same time period. In 1983, for example, 80 percent of Australians expressed confidence in police, compared to 76 percent in 1995, 68 percent in 2001 and 72 percent in 2003 (Bean, 2004).

This discrepancy between the improving level of police performance and generally unchanging or declining levels of public support suggests that the police are currently not capturing the potential benefits of heightened professionalism and improved performance. What might those potential benefits be? Studies suggest that they include: (1) greater public deference to the police during personal interactions; (2) increased compliance with the law; (3) higher levels of cooperation with police efforts to manage crime; and (4) stronger institutional support for police departments.

Deference is important because although people generally defer to the police, resistance and hostility does occur. When such resistance occurs it leads to confrontations and escalations of conflict that can lead to injuries among both the public and the police (Alpert & Dunham, 2004). In addition, voluntary deference leads to rule adherence over time, reducing the need for the police to revisit problematic people and situations in the future. Voluntary compliance and cooperation lessens the need for the police to try to control communities via the costly and inefficient approach of threatening to use force and other punitive powers such as arrest and detention. This frees up police resources for other tasks such as responding to calls for assistance.

To build a true partnership between the police and the community we need a focus on understanding what shapes public views about trust and confidence (i.e. or the *legitimacy* of the police in the community). This is not a new direction in policing. Rather it is an extension of the ideas that have defined community policing for the past several decades. Those ideas include focusing on how the community views the police, and building cooperative relationships between police and all members of the community. At the core of such a policing model is the premise that effective policing is a result of strong and positive relationships between officers and the people they serve. Police officers do this everyday through their use of operational procedures that build legitimacy within the community and which foster cooperation with the police and compliance with the law.

What is police legitimacy?

Legitimacy reflects the belief that the police are entitled to exercise their authority to maintain social order, manage conflicts, and solve problems in their communities. Legitimacy has traditionally been conceptualised as reflecting three judgments. The first

is public trust and confidence in the police. Such confidence involves the belief that the police are honest, try to do their jobs well and are able to protect the community against crime and violence. Second, legitimacy reflects the public's willingness to defer to the law and to police authority. And finally legitimacy involves the belief that police actions are morally correct and appropriate (Jackson et al, 2011).

To address the question of the legitimacy of the police and of policing practices among members of the public we need to think about policing in a new way. We need to focus on the influence that police policies and practices have on public views about police legitimacy. In other words, we need to examine how the people being policed experience police practices (i.e. what people in the community feel is an appropriate, reasonable and just police practice).

The importance of procedural justice in shaping police legitimacy

Research is very clear in suggesting that the primary issue shaping people's views about police legitimacy when people deal personally with the police is whether they believe that the police are exercising their authority in a fair way (i.e. *procedural justice*). So, the police can most effectively build and maintain legitimacy by policing in ways consistent with public views about procedural Justice.

Procedural justice is defined in terms of four issues (Tyler, 2006). The first two are concerned with the making of decisions and involve voice – the opportunity to present evidence – and the neutrality of decision making procedures. The second two involved the fairness with which people are treated by authorities – trust that the authorities are sincerely and benevolently motivated and evidence

that they respect people's dignity and rights.

First, people want to have an opportunity to explain their situation or tell their side of the story in a conflict. They are interested in having a forum in which they can tell their story (i.e. they want to have a voice). This opportunity to make arguments and present evidence should occur before the police make decisions about what to do. Second, people react positively to evidence that the authorities with whom they are dealing are neutral. This involves making decisions based upon consistently applied legal rules and principles and the facts of the case, not officer's personal opinions and biases. Transparency or openness about how decisions are being made facilitates the belief that decision making procedures are neutral when it reveals that decisions are being made in rule-based, principled and unbiased ways. Third, people are sensitive to whether they are treated with dignity and politeness, and to whether their rights as citizens are respected. The issue of interpersonal treatment consistently emerges as a key factor in reactions to dealings with legal authorities. In fact, Reiss (1971) has found that more than 60 percent of all complaints made about police dealt with an allegation of inappropriate verbal conduct by an officer. People believe that they are entitled to treatment with respect and react very negatively to dismissive or demeaning interpersonal treatment. Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing ("their trustworthiness"). People react favourably to the judgment that the authorities with whom they are interacting are benevolent and caring, and are sincerely trying to do what is best for the people with whom they are dealing. Authorities communicate this type of concern when they listen to people's accounts and explain or justify their actions in ways that show

an awareness of and sensitivity to people's needs and concerns.

Studies show that when the public believes that the police exercise their authority in procedurally fair ways they accept the legitimacy of the police and defer to police authority, both in particular situations and through a general increased level of compliance with the law and cooperation with the police (e.g., Tyler, 2006; Murphy et al, 2008). And, of particular importance is that the use of fair procedures encourages voluntary acceptance of police and legal authority. A US-based study shows just how important procedural justice can be for people accepting police directives (Tyler & Huo, 2002). The study examined a sample of Americans who were stopped by the police. The sample was separated into four groups along two dimensions: outcome favourability and the fairness of the person's treatment by the police. The study found that while people were somewhat more willing to accept police decisions that were favourable or that had fair outcomes, they were most strongly influenced by procedural fairness. In fact, it was found that people were about 15% more willing to accept decisions that were favourable, compared to those that were unfavourable. However, people were about 70% more willing to accept decisions when they received fair treatment as opposed to when they received unfair treatment. This difference was found irrespective of whether the outcome was good or bad. Hence, while both factors mattered, fairness of treatment dominated people's reactions to personal encounters with the police. Within Australia, a police stop for the purposes of random breath testing for alcohol is the most common reason people have contact with police. In fact, 57% of all police contacts with citizens in Australia are for a random breath test, and 20% are for the issuing of traffic infringements (Roberts & Indermaur, 2009), suggesting that fairness during

these types of encounters is extremely important. A recent Australian study has shown that perceptions of procedural fairness are particularly important to people who have a police-initiated contact such as a police stop (Murphy, 2009).

Of course police stops are not the only way that people have contact with the police. In fact, the most typical form of police citizen interaction other than police stops occurs when people seek help from the police. In Australia, approximately 23% of the public makes a call for police assistance each year (Roberts & Indermaur, 2009). In such situations the issue is not deference to police directives but satisfaction with police efforts to help. Tyler and Huo (2002) also examined people's reactions to police actions in reactions to requests for help and the findings are essentially the same as those already noted concerning stops. People's satisfaction with police actions in response to requests for help is greater if the police solve their problems, but the primary factor shaping satisfaction is the fairness of police treatment.

These findings are important because they mean that people are more willing to take the responsibility for accepting the behavioural limits of the law upon themselves if they are treated with procedural justice. In the absence of such a personal buy-in, the police must often revisit problem people and situations and try to motivate unwilling members of the community to change their behaviour by threatening or using force.

General views of the police

The other important issue for the police is general public opinion within the community. Most neighbourhoods in many cities are areas that have low crime and little urban disorder. People in those areas often have very little personal experience with the police and only infrequently deal with police

officers. When they do encounter police it is often when they are travelling outside of their own neighbourhoods. But the views of this segment of the population are important because they play an important political and economic role in the cities in which they live. As an example, during a period of economic crisis the police need to focus the majority of their attention upon high crime areas of cities to keep the crime rate stable. They need the support of the areas of the city that will inevitably receive lower levels of police attention during this time to make such a strategy sustainable. Similarly, the police rely upon people in the general population to both obey the law and cooperate with the police in policing their own communities; a reliance which again allows the police to concentrate their attention upon a smaller and more problematic group of high risk offenders.

Studies of the general population ask people not about their personal experience with the police, but rather about what they believe that the police generally do in their community. For example, do they respond to calls for assistance? Can they effectively manage crime and urban disorder? And, do they treat the people in the community with procedural fairness. The findings of this research are very much in line with the general argument being advanced here. People comply with the law in their everyday lives, cooperate with the police, and support policing as an institution when they believe that the police are legitimate. And legitimacy is something that is based upon whether they think that the police use fair procedures when dealing with the people in their community (Tyler, 2006; Murphy et al, 2008).

It is particularly important to note that majority group members view the police as less legitimate if they believe that the police are procedurally unjust when dealing with the members

of other racial or ethnic groups. For example, White residents evaluate the police as less legitimate if they believe that they profile or harass minorities (Tyler & Wakslak, 2004). Similarly, in the context of anti-terror policing non-Muslim members of the community view the police as less legitimate if they are perceived to be harassing Muslims (Tyler et al, 2010). In other words, people care about whether the police are acting fairly even when the target of unfairness is some other group or neighbourhood.

Procedural fairness concerns are central to people's reactions to legal authorities, irrespective of who the people being interviewed are. Since ethnicity and economic status often shape people's views about what constitutes a fair outcome, it is especially striking that there is a general willingness to defer to fair procedures. And, there is also general agreement about what constitutes a fair procedure. The four elements outlined earlier—participation, neutrality, treatment with dignity and respect, and trust in authorities—generally shape reactions to the police irrespective of the type of person involved. The use of fair procedures is, therefore, an ideal way to bridge differences between police and groups from different backgrounds.

Why do we care how people feel about the police?

As has been noted, success in policing efforts is enhanced when the police can gain and maintain support from the public. When the police deal with particular citizens they benefit when those citizens are more willing to defer to police authority and are less likely to be hostile and resistant. This in turn enhances officer safety. Further, the

police benefit when people continue to adhere to their directives once they have moved on so that they do not have to repeatedly revisit the same people and resolve the same conflicts again and again. Also if most people in the community obey the law most of the time the police have more flexibility to concentrate their resources on hot spots or on repeat offenders. And, their efforts to combat crime are enhanced when people in the community are both willing to help with policing, for example by coming to community meetings or joining neighbourhood watch, and aid in the fight against crime by reporting crime and identifying criminals living in their communities. It is especially beneficial if such efforts are voluntary. How can such support and voluntary cooperation be encouraged? As the findings outlined make clear a focus on creating police policies and practices that are viewed by the public as procedurally just will build police legitimacy, which in turn will enhance cooperation with police.

Changing policing policies and practices

When evaluating any new policing policy the police should ask two questions. First, of course is whether the policy will further the goals of preventing crime while at the same time protecting officer safety. Second, how will the policy be perceived by the public? Will people view this practice as fair? By seeking to balance both of these objectives – objective impact and impact on the views of the public – the police will be able to reap the benefits of public support and their own professional expertise. Irrespective of which police practices are being addressed, the goal is the same. The police want to prevent crimes where possible and solve them where necessary. Further, they want to deal effectively with public requests for

all types of police assistance. And they want to achieve these objectives in ways that protect officers and work within reasonable budgets. At the same time the police want to act in ways that create and maintain public legitimacy.

From an operational police perspective, what is particularly important is that making changes in procedure in order to respond to people's concerns can be relatively straightforward. Giving people a chance to account for their behaviour, providing explanations for police actions and policies, giving reasons for decisions, providing avenues for the public to make complaints, and treating people with dignity and respect are no cost or low cost changes. They do not, for example, require new technology. They are low cost changes that have high impact. Later this paper will provide several examples of how the police can use procedural justice to shape in relatively simple ways both public perceptions of police legitimacy and deference to police. While these are not the only ways in which procedural justice can be utilised with police, they highlight the benefits that can arise from police adopting a procedural justice-based policing strategy.

Addressing police concerns

Controlling crime

Does a procedural justice approach undermine efforts to control crime? One traditional view of policing is that communities have to choose between (a) police tactics that produce safety but are experienced by at least some in the community as unfair, and (b) the risks associated with higher levels of crime and violence. The procedural argument is that this is not an inevitable or necessary trade off. Rather the police can engage in necessary intrusions into the community if they do so within a procedural justice framework.

Focusing on the goal of legitimating police policies and practices does not prevent the police from engaging in the actions needed to combat crime. Rather it emphasizes the benefits of engaging in such actions through a framework of procedural justice. For example, when the police do stop someone on the street, or if they issue a move-on directive to an individual loitering in a public space, officers should provide opportunities for that individual to explain his or her situation, they should explain and justify the reasons for the stop or direction, they should identify themselves and emphasize that complaints about mistreatment are welcome, and they should emphasize concern about and respect for the well-being of the people they are dealing with.

The consequences of building legitimacy through procedural justice have been outlined. Legitimacy encourages particular people to accept decisions and everyone in the community to follow laws and cooperate with the police. These activities on the part of the community facilitate the job of the police. The police always face a trade off between policing high crime neighbourhoods and providing police services to those areas in which crime is lower. Self-policing helps to make such trade-offs less onerous. High crime areas can be less heavily policed if the community cooperates. And low crime areas can receive more police attention and faster responses to calls for service if the community is working with the police to manage the problems in lower crime communities.

Officer safety

A second concern raised in relation to procedural justice is with officer safety. Policing is a dangerous job and officers are naturally concerned about their safety. The assumption is that encounters with the public are potentially dangerous and the police will be safer if they project force and dominate people and

situations. Research does not support this. Research suggests that procedural justice lowers the rate of escalation and injury to officers as well as civilians (McCluskey, 2003). When the police react to perceived threat by displaying force it sometimes leads to escalation of conflict.

Of course, force is always needed in some situations or with some people. But, it should be a last resort because it undermines trust, encourages anger and defiance, and has other potentially negative collateral consequences. Hence, the police should generally emphasize the more cooperative procedural justice approach in the first instance (an approach sometimes called being “the reluctant warrior” who is moved to use coercion only when necessary). Of course, it must be acknowledged that force will always be in the background and it is hard to imagine a situation in which there will not need to be armed police who can be deployed to project force in extreme situations.

Operationalising a procedural justice-based policing approach

Given a theoretical discussion of how procedural justice can improve policing outcomes, how might procedural justice be operationalised in a policing context? This section cites six examples of how procedural justice strategies were implemented by police departments across four different countries. A recent Australian example of a change in police procedure which adopted procedural justice principles is the Random Breath Test approach used in a study involving the Queensland Police in Australia. This is perhaps the most impressive of the studies conducted. The 2010 study varied police actions during Random Breath Tests. A scripted procedural justice protocol was created which was longer than a control protocol. In the

procedural justice protocol officers were trained to focus on four procedural justice elements: voice, neutrality, trust, and respect. Irrespective of which procedure was used (the procedural justice protocol or the standard control protocol) breath tests were conducted and if the driver was driving while drunk traditional legal penalties were assigned.

For those drivers who received the procedural justice treatment officers added the elements of procedural justice to their stop behaviours. To provide voice the officer gave the driver a newsletter with recent crime news from their area. They asked if the driver had any questions or suggestions about crime issues or how to conduct policing in their area. To communicate neutrality the officers explained the procedures being followed. They noted that the driver was not singled out for the random drink driving test. Rather motorists were stopped randomly. They also explained the purpose of the police procedure: to reduce alcohol related accidents. To build trust officers communicated concern for the people in the community. They noted that their actions were motivated by concerns about the driver and the community. Officers indicated the number of deaths from drunk driving incidents and noted that officers hated to have to tell a family that someone they care about had died. They asked the driver to help the police reduce accidents by driving carefully. After the driver took the breath test the officers were instructed to try to end the interaction on a respectful note with a gesture of courtesy toward the driver. For example they might say “I want to finish off by thanking you for [something positive the driver has done—having child buckled up in seat; a well maintained car; seat belt on]”.

Evidence from the study suggests that this approach yielded a number of desirable benefits (Mazerolle & Bennett, 2010).

Relative to the control group who did not receive the procedural justice protocol, it increased the view that the police are fair and trustworthy. It also raised levels of confidence with the police and increased subsequent willingness to cooperate with police. Hence, the police were able to implement an enforcement action while building legitimacy through procedural fairness.

A similar protocol used during traffic stops in the US has also been found to be helpful in building police legitimacy. The study included police providing stopped motorists with explanations for police actions as well as communicating procedures for complaining about mistreatment. Sherman (2002) found that such a strategy led to a reduction in violence in the neighbourhoods subjected to the intervention. Further, citizen complaints of excessive force by police during police traffic stops was reduced.

One of the most dramatic demonstrations of the procedural justice effect is the finding that *how* police make arrests can affect the rate of repeat offending. Paternoster et al (1997) demonstrated that offenders who were arrested for domestic violence and who perceived that the police officers' arresting procedures were fair were less likely to repeat the offence than offenders who perceived the arresting procedures as unfair. Procedural justice actions included the police taking the time to listen to both the offender and the victim, not handcuffing the offender in front of the victim, and not using physical force. Similarly, Tyler & Fagan (2008) found that people who received negative outcomes (e.g. a traffic ticket) during a police stop through a fair procedure were on average more positive in their views about police legitimacy following the contact.

Such efforts to build legitimacy need not be focused only upon police stops.

The police can also build support among those who come to them seeking help. For example the Swedish police build legitimacy among those who seek police help by calling them back several days after their initial request for police assistance to ask each person if their problem had been dealt with or whether they had continuing problems that required further police attention (Elefalk, 2007). As is clear with police stops changes in police practices need not be extensive or costly to produce changes in police legitimacy.

Police programs for building legitimacy also need not be linked to specific police-citizen interactions. They can also apply to general police efforts to engage with the community. There are a variety of mechanisms that the police have traditionally used. For example, the police have long conducted meetings with people in the community to hear about community concerns. More recently, studies have found that the police can also communicate similar concerns and improve confidence in police by creating and disseminating newsletters. A study conducted in the UK, for example, found that trust and confidence in police in London was much higher among people living in suburbs that received newsletters about police engagement in their neighbourhoods. For people living in neighbourhoods that did not receive the newsletters, perceptions of police legitimacy were lower (Hohl et al, 2010). These findings support the idea that police legitimacy can be enhanced by direct police communication showing concern for the public.

Each of these relatively straightforward changes in operating procedures can build trust and confidence in the police, while at the same time reducing complaints against police officers and improving deference. Perhaps more importantly, however, such strategies can also keep

police officers safer because they reduce the need to have to escalate and use force to pacify an irate or resistant citizen.

Summary

In conclusion, when police adopt a procedural justice model they gain a more efficient and viable strategy for managing social order, which will facilitate securing and enhancing public cooperation. This strategy is an extension of traditional community policing approaches enriched with a new model of policing policies derived from the literature on procedural justice. The police also gain a safer and less hostile work environment while successfully controlling crime and maintaining social order by policing with procedural justice principles.

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