

## SP1 - COOPERATION

### SSH7

## GRANT AGREEMENT NR 217311

# SCIENTIFIC INDICATORS OF CONFIDENCE IN JUSTICE: TOOLS FOR POLICY ASSESSMENT

**Work Package 3:**

**EURO-JUSTIS methodology: conceptualisation of new and improved indicators of public confidence in justice**

**Task nr: 3.1/3.2**

**Set of Guidelines/specification for WP4 & WP5**

**Deliverable nr:D3.3**

A short synthesis report, designed for politicians and officials, summarising deliverables D.3.1 & D.3.2.

Version:	1	Date	March 27, 2010
Type:	Deliverable		
Confidentiality:	Unrestricted		
Responsible Partner:	CNRS		
Editor:	KCL		
Contributors:	CSD, IPS, KCL, LSE, UNIPR and NPLC		

## CONTENT LIST

<i>Executive Summary</i> .....	<i>iii</i>
<b>1. Introduction</b> .....	<b>1</b>
<b>2. Compliance theories and procedural justice</b> .....	<b>1</b>
2.1. Compliance theories .....	2
2.2. Procedural justice theories.....	2
<b>3. Testing procedural justice theories</b> .....	<b>4</b>
3.1. Variations across country.....	6
3.2. The quality of evidence from the ESS and similar surveys .....	6
<b>4. The relevance of procedural justice theories for policy</b> .....	<b>7</b>
<b>References</b> .....	<b>8</b>

## ***Executive Summary***

The research project EUROJUSTIS (Scientific Indicators of Confidence in JUSTIS: Tools for Policy Assessment), which is funded primarily by the European Commission from the 7<sup>th</sup> Framework Programme for Research, is designed to provide EU institutions and Member States with new indicators for assessing public confidence in justice.

This paper summarises the findings of the second substantive work-package of the project (WP3). This was a critically important part of the project, as it involves drawing up specifications for the design of both survey and country-level indicators. Later work-packages (WP4 and WP5) then went on to design these indicators.

This paper does *not* set out to describe the detail of this work. Rather, it aims to give a flavour of the ideas that we developed in conducting the work. These can be summarised as follows:

- For systems of criminal justice to work properly, there must be public consent to the rule of law, and citizens must see their institutions of justice as exercising legitimate authority;
- For this to happen, the public must trust the police and justice officials and have confidence in the system;
- And thus it is important for member states to monitor levels of trust, and to understand how best to build institutional legitimacy, where this is needed.

## 1. Introduction

This paper aims to summarise the main ideas that underpin the Euro-Justis project. It does not go into any technical detail. It is more concerned to convey to politicians and government officials the concepts behind the project. The key ideas are:

- For systems of criminal justice to work properly, there must be public consent to the rule of law, and citizens must see their institutions of justice as exercising legitimate authority
- For this to happen, the public must trust justice officials and have confidence in the system
- And thus it is important to monitor levels of trust, and to understand how best to build institutional legitimacy, where this is needed.

An important hypothesis that the project is exploring is that the surest route to building trust and legitimacy is for justice officials to treat not only victims and witnesses but also those at risk of involvement in crime, with fairness and respect.

These ideas are drawn from procedural justice theory, whose principles will be explained in more detail below. Procedural justice thinking has to date attracted most attention in Common Law jurisdictions such as the United States, Australia and the United Kingdom. Arguably it can be understood as a reaction – and a counterbalance – to the punitive justice policies to which these jurisdictions seem especially prone, even if the same drift to penal populism can be observed in some other European countries.

## 2. Compliance theories and procedural justice

To varying degrees, the penal and criminal policies of member states reflect tensions between simple – or even simplistic – models of crime control and ones which have more texture and depth. The key features of the simple ‘crime control’ models that are deployed in political and popular debate are that:

- people are rational-economic calculators in deciding whether to break the law;
- deterrent threat is the main weapon in the armoury of criminal justice;
- offenders – and thus crime rates – are responsive primarily to the risk of punishment, which can vary on dimensions of certainty, severity and celerity;
- thus increasing the severity of sentencing, and extending the reach of enforcement strategies are seen as sensible responses to crime, and,
- offender rights tend to be seen as a constraint on effective crime control.

More subtle models of crime control recognise that formal criminal justice is only one of many systems of social control, most of which have a significant normative dimension to them. Bottoms has argued persuasively that criminology has given insufficient attention to questions about why people comply with the law, and too much attention to questions about why people break the law (eg Bottoms, 2002). The imbalance is important, because questions about reasons for law-breaking tend – not inevitably but because of the political climate in which policy is developed – to yield answers framed within the boundaries of simple crime control models. They tend to imply approaches to crime control that are designed to secure *instrumental compliance* – that is, where people’s reasons for complying with the law are based on self-interested calculation.

Questions about compliance, by contrast, yield answers which recognise the interplay between formal and informal systems of social control, and in particular the normative dimensions in people's orientation to the law. Normative compliance with the law occurs when people feel a moral or ethical obligation or commitment to do so.

## 2.1. *Compliance theories*

Bottoms (2002) sets out a useful conceptual framework which proposes four routes to compliance:

- instrumental or providential compliance, where people's obedience to the law is driven by rational choice in pursuit of self-interest;
- normative compliance, where obedience flows from acceptance of ethical or moral norms;
- situational or constraint-based compliance – where people's lawbreaking is simply obstructed, for example by locks and bolts, or by imprisonment; and,
- compliance based on habit or routine.

In our personal and professional lives, the key mechanisms for securing instrumental compliance are incentives and rewards. Formal criminal justice is unusual in its reliance almost entirely on disincentives, or punishment, for securing instrumental compliance. Bottoms (2002:90) identifies three types of mechanisms for normative compliance:

- a belief that it is morally right to comply;
- emotional attachment to other individuals who believe this;
- and a belief in the legitimacy of formal authorities.

For our purposes, it is the third route to normative compliance that is important. It would be over-ambitious (and probably counterproductive) for the police to see themselves as moral engineers. On the other hand, it makes a great deal of sense for them to work hard at building their legitimacy in the eyes of the public.

Conceptual frameworks of this sort open up questions about regulation that tend to be ignored in political and popular discourse about crime. Specifically, there is all too rarely any recognition of the important normative dimension in decisions to comply with, or ignore, the law: how and why do people come to see breaking the law as the wrong thing to do? This is not to say that a simple instrumentalism is not sometimes the swiftest and simplest route to securing compliance, for *some* types of legislation. For example, drivers generally pay the tolls levied on entry to congestion zones in inner cities not out of any normative considerations but because non-payers face a very high chance of detection and sanction<sup>1</sup>.

## 2.2. *Procedural justice theories*

Procedural justice theories can be regarded as a sub-set of compliance theories, concerned with the third mechanism identified by Bottoms for securing normative compliance. Tom Tyler is probably the best known procedural justice theorist in North America (cf Tyler and Huo, 2002; Tyler, 2003; Tyler, 2007). Procedural justice theories propose specific relationships between:

---

<sup>1</sup> Around 200,000 vehicles enter the London zone daily, and around 100,000 fines are issued annually. <http://www.tfl.gov.uk/assets/downloads/fifth-annual-impacts-monitoring-report-2007-07-07.pdf>

- the treatment people receive at the hand of the police and other justice officials;
- the resultant trust that people have in institutions of justice;
- the legitimacy people confer, as a consequence of this trust, on institutions of justice;
- the authority that these institutions can command if they are regarded as legitimate; and,
- people's consequent preparedness to obey the police, comply with the law and cooperate with justice systems.

Legitimacy is a concept central to procedural justice theory. There are two uses of the term. Political philosophers often talk of political systems as achieving legitimacy when they meet various agreed objective criteria. Think, for example, of the presence of a democratic system of election, adherence by both rulers and the governed to the rule of law and the absence of endemic corruption. One can readily find examples of 'failed states' whose justice system lack legitimacy by virtue of their corruption and lack of legal and political accountability. Assessments of this sort also involve subjective judgements, of course, about the nature of the 'good or just society.'

But there is a separate set of questions that concern whether a criminal justice system manages to command legitimacy in the eyes of the public – i.e. whether the *policed* see the *police* as legitimate. These questions are open and empirical. Leaving aside whether that system actually meets any given set of objective (or ethical/normative) criteria, they turn our attention to surveys and qualitative methods of research, which give us insight into the attitudes, values, behaviours and beliefs of citizens.

*Perceived legitimacy* exists when the policed regard the authorities as having earned an entitlement to command, creating in themselves an obligation to obey. If people willingly offer their obedience to systems of authority that command legitimacy, questions about the 'drivers' of legitimacy become of central policy importance. It is possible to have a system of governance that commands high levels of perceived legitimacy from the governed whilst failing to meet the criteria of legitimacy that political philosophers would generally accept. Examples are to be found in many totalitarian and revolutionary regimes in their early phases.

Contrasting instrumental and normative models of compliance, Tyler argues that normative compliance is more economically secured, and is more stable over time, than instrumental compliance, which – in the US context at least – carries a growingly unaffordable social and fiscal cost. (The case for such an approach will be strengthened, of course, as the need to reduce public expenditure becomes more pressing over the next few years.)

On the basis of various surveys of the public, Tyler has demonstrated that public perceptions of the *fairness* of the justice system in the United States are more significant in shaping its legitimacy than perceptions that it is *effective*. An important distinction here is between a sense of justice based on process and one based on outcomes. Tyler's findings suggest that procedural justice – that is, fair and respectful treatment that 'follows the rules' – is more important to people than obtaining outcomes that they regard either as fair or favourable to themselves. In other words, in encounters with the police the quality of treatment received is more important than the objective outcome.

Tyler's main focus has been on the interactions between officials and the public, and the ways that the behaviour of officials builds or erodes institutional legitimacy. But there are other, more complex, dimensions to legitimacy. As Beetham (1991) has argued, people confer legitimacy on institutions not simply because the latter adhere to standards of good behaviour, but because they regard the institutions as representing particular normative and ethical frameworks. Conferring

legitimacy on an institution is also therefore an act based on the expression of shared values, or of 'moral alignment.' Institutional legitimacy flows not simply from factors such as its fairness but is also based in public perceptions that police and policed share broadly similar moral positions.

This is not to say that to be considered legitimate police must enforce laws that all citizens agree with. Rather, police must have, and demonstrate, 'moral authority' by embodying a shared sense of right and wrong. (This does not require them to be moralists, or to demonstrate moral superiority, but it requires them to negotiate order in a way that maximises consent.) To Beetham, this sense of moral alignment is central – it is a necessary component of legitimate authority. According to the procedural justice model, by extension the sense of a shared moral positions is communicated to citizens by the police through the quality of their behaviour in specific interactions, and in particular through their procedural fairness – or lack of it.

Legitimacy then generates compliance with the law, first because people grant society (and its justice system) the right to dictate appropriate ways to behave: while we may disagree with some of these laws, we nevertheless obey them because we think complying with the authority that enacted them is the right thing to do. Second, if individuals see the police as lacking 'moral fibre,' – most importantly by behaving in manifestly unfair ways – then this can paradoxically make the public cynical about the very rule of law.

According to Sampson & Bartusch (1998) legal cynicism is the sense that '...laws or rules are not considered binding in the existential, present lives of respondents' and the '...ratification of acting in ways that are "outside" of laws and social norms.' If the police – who are after all the most visible agent of social control and of the justice system that is empowered to define right and wrong behaviour – abuse their powers and wield their authority in unfair ways this can damage people's sense of obligation to obey their directives (their authority in the normal sense of the word). But it can also damage public perceptions of their moral authority, and through this perception of the moral right of the law. If the police are seen to act in ways outside of social norms – which dictate that such authorities should treat the people they serve with fairness and dignity – then this generates a powerful cynicism: 'if the police can behave however they please, so can I.'

### **3. Testing procedural justice theories**

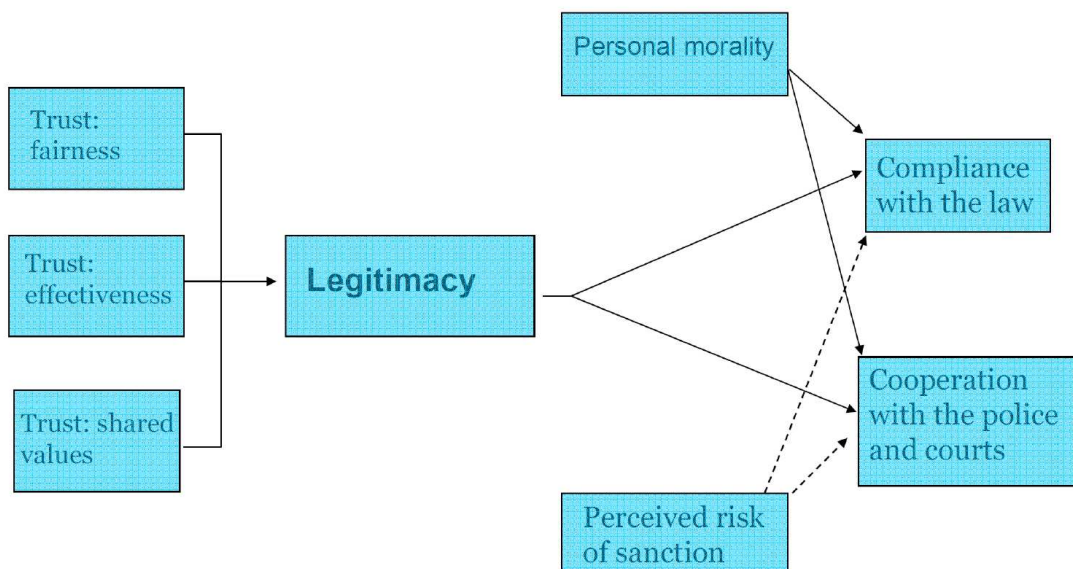
One criticism of Tyler's procedural justice model is that it may be culturally specific, in that it has been most often applied in English-speaking countries with common-law legal systems, and in particular in the United States. Will it 'work' in other contexts, such as continental Europe, where legal systems, and the position of the police within them, are often very different? Such questions are of particular relevant given the ever-increasing pluralism and mobility of the modern world. Will the methods implied by 'process-based' policing, and the ends they aim for, 'work' across, and within, diverse multi-cultural situations?

The work programme associated with Euro-Justis provides an important opportunity to test out these ideas, whilst at the same time providing member states with a suite of properly designed survey measures of public trust in justice. Euro-Justis, funded under the European Commission's FP7 programme is designing three sets of indicators:

1. a small number of top-line survey indicators of trust and confidence and security
2. a more detailed battery of survey items that measure sub-components of these concepts
3. country-level indicators of socio-demographic, economic and legal status, that will help with the interpretation of the survey measures.

Our survey indicators are currently being piloted in four countries. These pilots will not only test out their technical quality, but will give us some indicator of whether the sorts of relationship between trust, legitimacy and compliance that have been found in North America also exist in four European countries. However, we also plan a much fuller test of procedural justice theory in Europe. The Euro-Justis team successfully bid for space in the fifth round of the European Social Survey (ESS), to allow us to include a large module of questions on trust in justice. The ESS fieldwork will be carried out later this year, covering at least thirty European countries and around 40,000 respondents. The dataset will be available in 2011 and members of the Euro-Justis team plan to conduct a detailed analysis of the component on trust in justice. We expect this to become a definitive comparative study in criminology, charting variations – and consistent patterns – across Europe in the factors that affect public trust in justice and perceptions of institutional legitimacy. Figure 1 sets out the skeleton of the theory that we are testing.

**Figure 1: A conceptual framework**



The ESS will include Euro-Justis measures for both the police and the courts of public trust in fairness, effectiveness and shared values. We expect these to predict public perceptions of police and court legitimacy to varying degrees. One of our key hypotheses is that across Europe, trust in effectiveness is a less powerful shaper of legitimacy than trust in fairness and shared values. We expect our measures of legitimacy to predict people's stated preparedness to comply with the law, and with their preparedness to cooperate with the courts. Finally, and crucially, we hypothesise that perceived risks of punishment will only weakly predict public compliance and cooperation. We have already conducted an analysis on a UK survey dataset using these questions (Hough, Jackson and Bradford, 2010, in press) and found confirmation of the expected relationships.

### 3.1. *Variations across country*

Whilst we expect that the broad patterns of relationships between trust, perceived legitimacy and compliance will be consistent across Europe, we think it likely that perceptions of legitimacy will have different drivers (or predictors) in different countries. Without wishing to prejudge outcomes, some of the countries that have recently joined the European Community face serious problems of corruption, which may have highly unpredictable effects on perceptions of legitimacy. It is hard to see how corruption that has escalated out of control is compatible with legitimate authority – yet contained and low-level corruption that follows well-established informal rules may be tolerated or even appreciated by some sectors of the population (cf Tankebe, 2010).

We also expect to find that Nordic countries, with their generally cohesive communities and high levels of trust in political institutions, will also have high levels of trust in institutions of justice; we expect this to be reflected in institutions of justice that command high levels of legitimacy - which would go some way to explaining the relatively low levels of crime in these countries.

We suspect that Britain could prove something of an outlier, given the extent to which historically the 'Bobby' has been taken to be a symbol of particularly British values – of decency and of fair play, combined with pragmatism and the spirit of compromise.<sup>2</sup> It could be that the British police are still living off the income from this inherited cultural capital, and that other European countries have much lower expectations of those who they regard as state functionaries. On the other hand, our findings may show that the relationships between trust, legitimacy and compliance are actually stable across cultures and jurisdictions, at least within Europe and North America.

### 3.2. *The quality of evidence from the ESS and similar surveys*

Snapshot surveys of the general public can demonstrate the presence or absence of statistical association between different sets of attitudes and beliefs. This is not the same as demonstrating the presence of *causal* relationships. It will always be hard to assemble absolutely clinching evidence that fair and respectful treatment of the public builds legitimacy and thus consent to the rule of law. However, there may be scope for testing a range of procedural justice hypotheses more rigorously. In the meantime, we are hopeful that a research study such as ours that can exploit the natural cultural and legal variations across Europe will create genuinely new insights into the different ways in which institutional legitimacy is constructed and maintained (or lost) in industrialised, late-modern countries. Equally, our hypotheses may be proved to be plain wrong.

Assuming, optimistically, that we are proved by our results to be more right than wrong, it will always be possible to build alternative explanations for our findings that are outside of the procedural justice framework elaborated in this paper. However, we envisage this research as a process of scientific hypothesis testing and theory building. That is:

- we have elaborated a theory about processes of social control;
- we have derived a set of hypotheses derived from our theory; and,
- we have designed a cross-cultural test of these hypotheses.

We think that if our hypotheses survive empirical, this process confers more credibility on them than alternative explanations designed after the event to fit the pattern of findings that we observe.

<sup>2</sup> We express no opinion as to whether this is, or was, delusional ethnocentrism.

#### 4. *The relevance of procedural justice theories for policy*

The growing visibility of procedural justice theory within criminology strikes us as important, in particular because of its potential impact on policy. It is open to question whether the marked tendency towards penal populism amongst UK and US politicians is part of a universal trend amongst developed countries. The pessimistic view (which we share) is that structural features of late-modernity place many European countries at risk of the same processes as we have seen in this country: the emergence of an increasingly simple discourse about crime control which emphasises:

- 'common sense' strategies for securing instrumental compliance from 'criminals';
- greater responsiveness to the wishes of the 'law-abiding majority'; and,
- greater responsiveness to the needs of victims.

This discourse tends to characterise rights as a 'zero sum game' in which rights of offenders are in tension with those of victims and the 'law-abiding majority'. Being 'on the side of the victim' within this discourse equates with a preparedness to shave away the rights of suspects and defendants. Procedural justice theory suggests that this is likely to be counterproductive: if the justice system ignores the rights and entitlements of 'the policed', this creates the potential for a growing deficit in legitimacy which shows itself in reduced compliance with the law. The policing of ethnic minority groups may provide one example of how police practice works alongside other social and cultural forces to foster among some people from those communities exactly the sense of legal cynicism that damages trust in justice and reduces commitment to the rule of law.

In an over-simplified discourse about crime control, the rationale for improving 'confidence in justice' is that greater consumer satisfaction on the part of the 'law-abiding majority' will secure their cooperation with the authorities – through reporting of crimes, and acting as witnesses etc. – thus enhancing the deterrent effectiveness of the system. A procedural justice perspective would direct attention to 'confidence building' amongst those parts of the population whose commitment to the rule of law was more tentative, the primary purpose being to secure compliance first, and cooperation second. It would also allude to the fact that the 'law-abiding majority' also commit crime, and that in any case they too care more about fair procedure than effectiveness narrowly defined. All available evidence suggests that fostering trust and legitimacy via fair and decent treatment would pay dividends across the population.

In making this case to senior police officers, we have often got the reaction that these distinctions are of minor importance, in that we are all 'on the same page' in wanting to improve the professionalism with which the police handle the public, and that treating people with fairness and respect is a shared goal. However, there is an important difference, which is worth emphasising. Police – and politicians – generally support the idea of improving confidence out of considerations of *reciprocity* – whereby responsive policing buys public cooperation. They tend not to focus on the treatment of law-breakers and those at risk of law-breaking. The procedural justice rationale by contract focusses attention precisely on these groups whose compliance with the law is problematic, and actually provides a rationale for explaining why the criminal justice system should actually treat *justice* as the central product of the system. It provides a vocabulary for explaining why fairness and rights – for everyone – are important.

## References

- David Beetham (1991) **The Legitimation of Power**. Basingstoke: Palgrave Macmillan
- Bottoms, A. E. (2002) 'Compliance and Community Penalties', in (eds. T. Bottoms, L. Gelsthorpe and S. Rex) **Community Penalties**. Cullompton: Willan Publishing
- Hough, M, Jackson, J. and Bradford, B. (2010 in press) 'Procedural justice, trust and institutional legitimacy'. **Policing: : A Journal of Policy and Practice**.
- Sampson, R. J. and Bartusch, D. J. (1998) 'Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences.' **Law and Society Review** **32**: 777-804.
- Tankebe, J. (2010) 'Public Confidence in the Police: Testing the Effects of Public Experiences of Police Corruption in Ghana', **British Journal of Criminology**, **50**, 2. pp 296-319.
- Tyler, T.R. & Huo, Y.J. (2002). **Trust in the law: Encouraging public cooperation with the police and courts**. New York: Russell Sage Foundation.
- Tyler, T.R. (2003). Procedural justice, legitimacy, and the effective rule of law. In M. Tonry (Ed.), **Crime and justice--A review of research** (volume 30; pp. 431-505). Chicago: University of Chicago Press.
- Tyler, T, R. (2007) **Legitimacy and Criminal Justice**. New York: Russell Sage Foundation.