

# Fairness at Trial: The Impact of Procedural Justice and Other Experiential Factors on Criminal Defendants' Perceptions of Court Legitimacy in Poland

Stanislaw Burdziej, Keith Guzik, and Bartosz Pilitowski

*A large body of research supports the procedural justice hypothesis that quality of treatment matters more than outcomes for institutional legitimacy. How fairness matters across legal institutions and geographic settings remains an open question, however. This article uses a survey of criminal defendants to test the factors associated with perceived legitimacy of courts in Poland, a country whose judiciary is currently subject to intense political contestation. The findings confirm the primacy of procedural justice, while also illustrating the influence of instrumental performance factors such as time and court organization. This suggests that in contexts of political transition with disputed legal institutions, citizens' contact with procedurally fair, operationally efficient institutions can support the legitimacy of authorities and strengthen the rule of law.*

After the sentence, someone always loses and is unhappy. Sometimes, indeed, both parties are unhappy, because even those who won did not win as much as they wanted.

Małgorzata Gersdorf, Polish Supreme Court President, and Roman Hauser, former President of the National Council of the Judiciary (Gersdorf and Hauser 2014)

## I. INTRODUCTION

Few areas of socio-legal scholarship have been as influential on both the practice and study of law as procedural justice. Procedural justice—the idea that how people are treated by legal authorities is often more meaningful to their subsequent conduct and perceptions of authority than whatever punishment they

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**Stanislaw Burdziej** is an associate professor of sociology at the Department of Sociology, Nicolaus Copernicus University in Torun, Poland. He can be contacted at [s.burdziej@umk.pl](mailto:s.burdziej@umk.pl).

**Keith Guzik** is an associate professor of sociology at the Department of Sociology, University of Colorado Denver.

**Bartosz Pilitowski** is founder and president of Court Watch Poland Foundation, an independent nongovernment organization working to improve the experience of Polish citizens with courts. He is also a PhD candidate in sociology at the Department of Sociology, Nicolaus Copernicus University.

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receive—serves as a powerful counterpoint to deterrence, the idea that punishment is the best way for society to fight crime and preserve the rule of law. At a time when deterrence-based approaches have increasingly come into question in the United States (Harcourt 2001; Shavin 2015), procedural justice promises a more effective alternative for practicing justice (see, e.g., Tyler 2007).

Concerns for the effective administration of justice and its impact on rule of law are not exclusive to the United States. The legitimacy of legal institutions can be especially low in countries outside the United States and Western Europe, diminished by corruption (Czarnota, Krygier, and Sadurski 2005) and the legacy of colonial or communist rule (Kurczewski 2007). Institutions whose legitimacy is questioned in turn have a more difficult time carrying out basic governmental tasks (taxation, policing, adjudication, etc.) that are foundational to the rule of law. Procedural justice offers a way for authorities to strengthen the rule of law by demonstrating fairness and respect in their interactions with laypersons.

But the potential of procedural justice to bolster legal institutions is not without its challenges. Although many replication studies have confirmed its importance in criminal legal contexts, uncertainties remain. For one, the literature often does not discriminate between legal institutions (police, courts, corrections), thereby overlooking the ways in which fairness might look and matter differently depending on institutional setting. Also, research has focused heavily on the United States, a country with uniquely stable legal and political institutions, which leaves unanswered the importance of procedural justice in postcolonial and transition countries. In addition, studies routinely reach their conclusions based on surveys of the general public rather than on surveys of individuals with recent contact with legal authorities. Thus, how centrally procedural fairness matters in people's legal experiences and subsequent views of authorities and the law, especially in transition societies, remains an open question.

This article looks to respond to these gaps by examining the factors associated with perceived legitimacy of courts and law among a sample of 228 defendants receiving a criminal sentence in Poland, a country whose judicial system has been the subject of ongoing political disputes. Using a regression analysis of respondents' perceptions of substantive outcomes, procedural fairness, and organizational performance, it confirms that procedural justice does indeed share a stronger relationship with the perceived legitimacy of courts and the law than other competing factors. Additionally, when prompted to reflect on their experiences at court through open-ended questions, individuals added that performance-based, instrumental factors, such as "long waiting time for the trial and resolution" of cases, figured centrally in their assessments.

These findings represent important contributions. For one, they provide clear evidence of the significance of procedural fairness for criminal defendants at court, a population and legal setting that has been understudied. Second, and more importantly, they demonstrate the importance of procedural fairness across cultural and institutional contexts. In Poland, a post-communist country whose courts operate under an inquisitorial model, fair procedures matter more to defendants than other factors (such as the substantive outcomes of sentences) that are often considered as leading factors related to citizens' (dis)satisfaction with courts. Third, they also

indicate the continuing salience of instrumental performance factors (time and court organization) that past socio-legal research has specified as central to people's experience of courts. This suggests that in contexts of political transition or in times of institutional questioning, citizens' direct contact with procedurally fair, and operationally efficient, public institutions can help to support confidence in authorities and strengthen the rule of law.

## II. LITERATURE REVIEW

### Procedural Justice and Institutional Legitimacy

Procedural justice was introduced into socio-legal scholarship by John Thibaut and Laurens Walker (1975) in their classic study comparing adversarial and inquisitorial procedures for dispute resolution. In a series of experiments, undergraduate and graduate students were exposed to different methods of dispute resolution and asked to evaluate their experiences. Thibaut and Walker found that participants trusted adversarial justice more to produce accurate and unbiased judgments. The key difference between the two lay in the degree of control given to disputants. While adversarial procedures are defined by "allocating the preponderance of control to the disputants," inquisitorial procedures cede control over decision making to third parties (judges) (Thibaut and Walker 1975, 118).

Procedural justice has subsequently grown as a research area, in good part due to the prodigious scholarship of Tom Tyler and his colleagues. Over the course of some thirty years, these researchers have examined the relationship of fair procedures to people's evaluations of legal authorities, legal institutions, and the law in a diverse range of settings, including police interactions, correctional facilities, courtrooms, the workplace, and so forth (Tyler and Blader 2000; Tyler and Huo 2002; Sunshine and Tyler 2003; Tyler 2007). Procedural justice in these works is generally conceptualized along two axes: (1) the quality of treatment people receive from authorities, as measured by respect, understanding, and/or helpfulness; and (2) the quality of authorities' decision making, as measured by voice and neutrality (Tyler 2000; Blader and Tyler 2003; Farley, Jensen, and Rempel 2014). Consistently, studies have found that such relational factors often matter more in people's assessments of their legal interactions, gauged by their confidence and trust in authorities and the law, than do the substantive outcomes of these encounters (Tyler 1984, 2000, 2007; Tyler and Huo 2002).

This body of research draws its importance, in turn, from the relationship between people's trust in the law and their compliance with the decisions of authorities and rules of society. In other words, procedural justice is important because it fosters legitimacy, whereby people voluntarily defer to the decisions and rules of authorities (Tyler et al. 2007, 11). And in replication after replication of Tyler's process-based model of legitimacy, measures of procedural fairness have shown the strongest relationship to perceived legitimacy (which in turn possess the strongest ties to legal compliance) (Hough, Jackson, and Bradford 2013; Tyler and Jackson 2014; Sifrer, Meško, and Bren 2015, 161). Importantly, these findings hold

across racial groups (Tyler 2009). Thus, procedural justice sustains legal and institutional legitimacy in the face of racial and ethnic inequalities in justice outcomes that are usually thought to shape people's views of the police and other authorities.

The policy implications of this research are significant, as procedural justice provides a clear model for how legal authority is best exercised. Most importantly, it offers a strong counterweight to deterrence, the dominant theoretical understanding informing a wide range of justice practices in the United States, which reasons that people comply with the law out of fear of punishment (Johnson, Maguire, and Kuhns 2014; Jackson and Gau 2015). Following decades of popularity as the preferred option for criminal justice policy and practice, as evidenced by the pervasiveness of zero-tolerance policies (Black 2016), broken windows policing (Wilson and Kelling 1982; Corman and Mocan 2008), three-strikes laws, truth in sentencing (Zimring, Hawkins, and Kamin 2003), solitary confinement (Guenther 2013; Richards and Newbold 2015), and the like, the default inclination to punitive practices has increasingly come into question (Alexander 2012). Popular protests against civilian deaths at the hands of the police in routine interactions have helped shift debate in the United States concerning punitive police practices (Tyler 2011). Declining public budgets following the global economic downturn in 2007 have made public officials more sensitive to the high costs of maintaining large police forces (Justice Policy Institute 2012; Salisbury 2012) and incarcerating large numbers of offenders for nonviolent crimes (Tyler et al. 2007). Leaders in the criminal justice community have become sensitive to the damage that a sanction-based orientation does to their relationship with the public (Tyler et al. 2007). And, practically speaking, research has shown that punishments perceived as unfair are likely to foster anger and defiance among offenders, decreasing their likelihood of compliance with the law (Piquero, Gomez-Smith, and Langton 2004). In place of teaching offenders their lessons, punishment often imbues other messages about the injustice of the legal system more broadly (Guzik 2009).

Procedural justice offers a proven alternative for addressing these concerns. For instance, police can foster trust from members of the public, and therefore compliance with law, by demonstrating respect and providing voice to individuals in their public interactions (Mazerolle et al. 2012; Sifrer, Meško, and Bren 2015). Judges may find it in their interest to explain procedures and sentences fully to litigants or to divert cases out of tracks leading to custodial sentences (Gover, Brank, and MacDonald 2007; Sprott and Greene 2010). And prison administrators may opt to provide detainees opportunities to negotiate certain aspects of prison daily routine, as well as involving them in maintaining cleanliness and social order (Bottoms and Tankebe 2012, 140).

Despite the promise of procedural justice as a solution to the challenges facing legal institutions, doubts persist. For one, studies routinely group distinct types of legal authorities and institutions—different levels of police, courts, and jailing facilities—together under the umbrella term of the criminal justice system. This is a questionable move. Although the police, courts, and corrections are each involved in the administration of criminal justice, they possess multiple and different functions that impact the expectations and perceptions people have toward those authorities. Prison researchers, for instance, have also shown that within the

enclosed space of a custodial institution, perceived outcome fairness is as important as procedural fairness because the outcomes of most incidents are widely known throughout the prison (Sparks and Bottoms 1995; Bottoms and Tankebe 2012). Such distinctions often fail to make it into the opinion surveys used to measure procedural justice and legitimacy. In addition, the history and structure of these different justice institutions vary in ways that can be expected to be meaningful. For example, the federal government has much less influence over state courts than it does over police, prosecutors, and corrections (Rottman 2010). Given the distinct character of legal institutions, claims concerning the relationship between fairness and legitimacy would best focus on a particular institutional setting.

In addition, the majority of research on procedural justice has been carried out in the United States, a common law country with a historically specific legal culture. It is not surprising that as procedural justice has traveled outside the United States, questions have surfaced about the generalizability of the procedural justice hypothesis (see, e.g., Tankebe 2009). Geography can have particular importance for the claim that procedural justice is tied to the legitimacy of legal institutions across racial and ethnic groups. Some countries, such as Belgium, Switzerland, and the United States, have longer histories of political stability around different ethnic and cultural groups, while others, such as France and the Netherlands, are only more recently diversifying because of the incorporation of new immigrant groups (Tyler et al. 2007, 17). In addition, the US legal system has a relatively long history of institutional stability that is uncommon in most regions of the world. The legitimacy of the law within Eastern European societies, for instance, is presumably much different given the imposition of political authority by the Soviet Union following World War II and the current integration with the European Union (Skap-ska and Bryda 2013; Tyler et al. 2007, 17). Similar dynamics would need to be taken into consideration in studying the legitimacy of the law in postcolonial societies (Tankebe 2013; Bradford et al. 2014). Thus, the geographic and institutional settings where procedural justice matters require further research (Tankebe 2013). In the next sections, we consider these two issues in greater depth.<sup>1</sup>

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1. Other doubts and controversies exist in this field as well. One central concern is that few studies have established a causal connection between procedurally just treatment by legal authorities and legal compliance and perceived legitimacy (see Nagin and Telep 2017). Establishing causality would require “demonstration of an exogenous manipulation of actual behavior affecting perceptions of procedurally just treatment and perceptions of legitimacy and ultimately legal compliance” (Nagin and Telep 2017, 5), which few studies have been able to do (but see Mazerolle et al. 2012). Another matter of increasing controversy in the field is the conceptualization of legitimacy. In his work, Tyler generally defines legitimacy, following Zelditch (2001), as the state or condition whereby people “believe that the decisions made and rules enacted by that authority or institution are in some way ‘right’ or ‘proper’ and ought to be followed” (Tyler et al. 2007, 10). To measure it, researchers have used two subscales: institutional trust and perceived obligation to obey the law (Tyler 1990, 45; 2007, Tyler and Huo 2002). This approach to legitimacy has received criticism for equating trust with legitimacy and using obligation to obey, which can be difficult to distinguish from “dull compulsion,” to measure legitimacy (see Bottoms and Tankebe 2012; Johnson, Maguire, and Kuhns 2014). Given limitations in our research design as well as space in this article, we are unable to take up these matters here. Our study is based on a survey of criminal defendants’ court experiences, independent of any manipulation in judicial behavior, which prevents us from speaking causally about the relationship between procedural justice and legitimacy. And we largely follow Tyler’s definition of legitimacy based on the results of our factor analysis, although exploring differing conceptions of legitimacy is undoubtedly a topic ripe for analysis in a post-transition society such as Poland.

## Procedural Justice in Court Settings

Courts are interesting sites for studying the relationship between fairness and legitimacy, since they deal with a wide array of disputes and are generally accessible to laypeople. And past research has confirmed the same basic relationship between procedural justice and perceptions of institutional legitimacy. For instance, criminal defendants and other litigants are more likely to leave court with a positive impression of their experience and authorities when they perceive the court process as fair, regardless of whether they win or lose their cases (Tyler 1984, 2007; Sugawara and Huo 1994; Tyler and Huo 2002; Frazer 2006; Gover, Brank, and MacDonald 2007; Farley, Jensen, and Rempel 2014; Sifrer, Meško, and Bren 2015). And perceptions of procedural fairness have also been linked to an increased likelihood that litigants will comply with court orders and follow the law in the future (Tyler 2003, 2007; Gover, Brank, and MacDonald 2007; Farley, Jensen, and Rempel 2014). These findings reflect what Tyler and Sevier (2014) have termed a relational perspective of legitimacy, where people value inclusion and recognition above truth determinations and substantive considerations.<sup>2</sup> Significantly again, these findings hold across race and ethnic groups (Tyler 2007).

These findings represent a departure of sorts from past academic research on courts.<sup>3</sup> Seminal law and society studies based on field research of court settings emphasized the primacy of organizational factors in shaping people's legal experiences. This research described how court organizations routinely operate to the exclusion of the defendants and litigants they are intended to serve (Eisenstein and Jacob 1977; Feeley 1979; Yngvesson 1988). Procedural justice represents a shift in scholarly focus in two ways. First, the earlier research, conducted against the backdrop of social movements promoting greater access to justice and equal rights, tended to focus on disparate legal outcomes across groups and the inability of rights

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2. As noted above, a good deal of scholarly debate surrounds legitimacy (Johnson, Maguire, and Kuhns 2014). In response, scholars have modified definitions of the concept. These re-conceptualizations agree that legitimacy is a multidimensional construct, but they disagree about what those dimensions are. Jackson and Gau (2015), for instance, continue to include obligation to obey as an element of legitimacy, in addition to moral alignment (between authorities and those subject to their rule) and perceived legality (the formal right to exercise power). Others, looking to avoid the dull compulsion conundrum, choose to work from Beetham's (1991) conceptualization of legitimacy as consisting of three dimensions: legality (the formal right to exercise power), shared values (the moral right to exercise power), and consent (the consensual exercise of power). Critical in this definition is the difference between "obligation to obey" and "consent," a distinction based on the idea that the exercise of power is defeasible, or open to questioning and revision, by the parties subject to it. In this study, given the results of our factor analysis, we largely follow traditional conceptualizations of legitimacy that include obligation to obey. We nevertheless acknowledge the need for further research into the nature of legitimacy, which is especially important in post-communist countries where citizens may have experienced authorities with differing legal and moral claims to power.

3. The emphasis on procedural justice also departs from traditional ways of assessing court performance (see Rottman 2010). Typically, when courts are evaluated, attention is paid to how well they achieve three objectives: establishing the truth, punishing justly, and operating efficiently. To determine the first two objectives, researchers examine the frequency of erroneous verdicts and of punishments departing from objective standards of distributive justice (Tyler and Sevier 2014, 1095). To examine efficiency, judges consider such instrumental factors as the financial costs and time required to clear cases (Rottman 2010). Procedural justice, with its focus on how people perceive their treatment, regardless of the substantive outcomes of justice and instrumental considerations, represents a new orientation for judging court performance.

to ameliorate the effects of social inequality. Procedural justice research, in contrast, reflecting the psychological training of its early proponents, tends to look past unequal legal outcomes in focusing on court users' perceptions of how they were treated. This de-emphasis of social inequality reflects what has been described as "the dark side of procedural justice" (MacCoun 2005, 193). Second, earlier research tended to emphasize administrative and organizational fixes to correct inequalities in legal outcomes, such as increased funding for legal services to ensure people's rights at court more effectively, or bail reform to reduce the pressures on defendants to plea bargain (Feeley 1979). Procedural justice research, in contrast, by arguing that what people receive at court does not matter as much as how they are treated, would target reforms in authorities' interactions with people to improve the operation of justice<sup>4</sup> (see Gover, Brank, and MacDonald 2007; Rottman 2010).

But questions surround the claims that procedural justice can heighten perceptions of court authority and compliance with the law. First, people go to court for a variety of reasons, some voluntary and some not. Such differences matter for people's expectations and perceptions of their court experiences. Numerous studies have shown that those with higher stakes in the outcome of a court case but less control over it (e.g., defendants) express less confidence in state and local courts, while those with lower stakes and more control (e.g., jurors) are more confident in them (Benesh and Howell 2001, 199; Benesh 2006; Longazel, Parker, and Sun 2011). Experience matters not only for individual litigants, but also for court actors. For decision makers and lawyers, distributive justice and instrumental performance concerns are the most important factors influencing court legitimacy, followed by quality of treatment. Interestingly however, among attorneys with lower levels of court involvement, procedural justice tends to matter more (Rottman and Tyler 2014, 1056). Thus, more research is needed to answer for whom procedural justice at court does and does not matter.

Second, courts vary in type and operation. More people come into contact with civil and traffic courts, and these experiences are different from those at criminal court (Sifrer, Meško, and Bren 2015). And for civil litigants, research has shown that procedural justice is less important than substantive outcomes or distributive fairness (Rottman and Tyler 2014).

Extending this point further, at the global level, courts differ between common law systems based on adversarial justice and continental law systems based on inquisitorial justice. These justice systems operate according to different principles—adversarial justice prioritizes process; inquisitorial justice prioritizes truth—that require different types of performances from judges. Judges in adversarial systems, for instance, work to be neutral arbitrators in disputes, while judges in inquisitorial systems work to be investigators and collectors of facts attempting to uncover

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4. To realize the potential of procedural justice in improving the judiciary branch, a court management framework would be needed that treats people's entire experience with the legal system from a process-based model, including experiences with the police, out-of-court experiences with their lawyers, treatment by jail authorities, court clerks, and bailiffs, and experience in the courtroom dealing with judges and lawyers (Tyler 2007, 25). Thinking more progressively, it might also mean looking to divert certain types of cases away from traditional punitive sentences to avoid the defiance that can often result from such sentences (Spratt and Greene 2010).

the truth (Sevier 2014). These differences can be expected to carry consequences both for what people expect from courts and how they experience them. And while previous research, including Thibaut and Walker's (1975) initial experiments on court procedures, has suggested that people prefer the adversarial system to the inquisitorial system, Anderson and Otto (2003, 562) find in their comparison of Dutch and US courts that people have a clear preference for their own system. A wider body of research likewise suggests that the inquisitorial system has advantages over the adversarial system in terms of perceived greater accuracy and less sensitivity to outcomes, but that these advantages come at the cost of perceived fairness (Sevier 2014, 220). In sum, different types of courts and court systems can associate with different values for users, which would mitigate the impact of procedural justice on their experiences. Bearing this in mind, the importance of procedural justice, versus substantive outcomes, truth, and organizational performance, in different court settings requires more investigation.

### Procedural Justice in Postcolonial and Transition Contexts

More fully testing the process-based model of legitimacy would also involve examining legal institutions outside the United States. Research has generally shown that procedural justice is a universal concern, regardless of culture, race, class, gender, social status, and other social characteristics. In a recent analysis of the European Social Survey, for instance, Hough, Jackson, and Bradford (2013) find procedural justice a stronger and more consistent predictor of police legitimacy than either police efficacy or distributive fairness. But the strength of the procedural effect can differ across cultural and political contexts. For example, in his analysis of Afrobarometer data, Tyler (2010) found that procedural justice more strongly influenced citizens' cooperative behavior with the political system than did instrumental motivations such as government performance in meeting basic economic and social needs.<sup>5</sup> Research in Japan, a country with a strong collectivist tradition, found that procedural justice has a significant relationship with overall evaluation of Japanese courts in civil matters as well as in traffic disputes (Sugawara and Huo 1994; Ohbuchi et al. 2005). However, in Korea, another collectively oriented society, status equity (one's job ranking compared to human capital inputs) enhanced employees' job satisfaction more than procedural justice or distributive justice (Yoon 1996). Israeli citizens also value fair treatment, but in situations of increased terrorist threat, they tend to focus more on police effectiveness (Jonathan-Zamir and Weisburd 2009). Similarly, in China, both effectiveness and procedural justice predict citizens' views of police legitimacy (Sun et al. 2017).

Effectiveness has been shown to possess a particularly strong relationship with legitimacy where crime rates are high and public officials corrupt, as is the case in many postcolonial or transitional countries. Tankebe's (2009) study on police

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5. Research on perceptions of institutional legitimacy in Nepal (Fisk and Cherney 2017) and the US occupation in Iraq (Fischer et al. 2008) have also indicated the primacy of procedural justice concerns above others such as government service delivery.

legitimacy in Ghana, for instance, found the perceived effectiveness of the police was the only variable positively associated with the willingness of citizens to cooperate voluntarily with police. In Pakistan, too, perceptions of police effectiveness in controlling crime were more strongly linked to police legitimacy than perceptions of procedural fairness (Jackson et al. 2014). A similar dynamic was found in South Africa, where the police until recently were a tool of political discrimination and oppression against the country's nonwhite majority (Bradford et al. 2014). A national survey of South Africans found that in assessing South African police, respondents placed greater emphasis on police efficiency in fighting crime than procedural fairness. Somewhat distinctly, distributive justice showed a stronger relationship with institutional trust than did procedural justice in Mexico and Germany, in contrast to the United States and India (Konovsky 2000, 505). These findings suggest a possible "boundary condition" (Jackson et al. 2014, 1083) of procedural justice—that is, only where the police (and other state institutions) can guarantee basic safety is there room for procedural fairness (Bradford et al. 2014).

At the same time, procedural justice remains important in studies of other postcolonial, transitional countries. In a comparison of transition countries to those with a longer established rule of law, Price et al. (2001) found that voice was just as important for respondents from the United Kingdom, Mexico, the Netherlands, and the United States. Rahim et al. (2001), meanwhile, found that procedural justice similarly shaped the attitudes of employees in both the United States and Bangladesh. In one of the few studies that took place in a post-communist society (Slovenia), Reisig, Tankebe, and Meško (2012) showed that the experience of fairness tied to greater legitimacy of the police, as measured by the willingness of citizens to obey the law (Reisig, Tankebe, and Meško 2014). And particularly relevant to the current study, Cheng (2015, 2018) found in a survey of Hong Kong residents that perceived procedural justice on the part of judges and prosecutors was positively associated with perceptions of court legitimacy.

Taken together, recent studies from countries outside the United States provide evidence both supporting and challenging the generalizability of the procedural fairness thesis. More research from such post-transition and postcolonial countries, where people have experience with multiple legal regimes, would help clarify the matter.

### III. THE PRESENT STUDY

This study looks to address these gaps by presenting the results of a study surveying 228 defendants receiving criminal sentences in Poland about their court experiences. By focusing on courts and criminal defendants, the study examines the experiences and subsequent perceptions of those with direct, recent legal experience, in contrast to many studies that rely on opinion surveys of the general public (for notable exceptions, see Tyler 1984; Baker et al. 2014; Baker 2017). And by focusing on a country that has not only experienced political transition, but has

also been consumed recently by public debate about the shape and nature of law (see below), this study takes advantage of a unique opportunity to capture the views of people in a setting where different approaches to dispute resolution have been actively debated and discussed.

## Research Setting

Poland, with its vibrant economy, stable political institutions, and highly educated population, is generally regarded as one of the bigger success stories among Central and Eastern European countries transitioning from communist to social-democratic rule. This is despite a long history of foreign domination that continues to significantly shape Poles' attitudes toward the state and the legal order.<sup>6</sup> Importantly for a study of institutional legitimacy, the judiciary in Poland did not experience a major transformation after 1989, unlike many public institutions in the country. Most significantly, no verification (or lustration) of judges was ever carried out to determine sympathies or ties with the communist regime. This was especially controversial given the fact that a number of judges were involved in political trials (e.g., of "Solidarity" movement activists) or were seen as lenient toward instances of abuse by the communist leadership (such as a massacre of workers protesting in 1970 and during the introduction of martial law at the end of 1981, shortly after the "Solidarity" movement emerged).<sup>7</sup>

The transition to democracy nonetheless presented the Polish judiciary with serious challenges. Most significantly, the number of cases handled by the courts exploded, from 1.9 million cases in 1989 to some 15.2 million cases in 2015. These numbers are in part a product of the court system's complex structure inherited from the communist period, which allows certain types of cases to circulate between three levels of review (e.g., from circuit court to appellate court, and then to the Supreme Court, and then back to the appellate court and circuit court again). Also, after 1989, with the abuses of the communist era in mind, access to court was greatly expanded. The court system is currently composed of the Supreme Court, two tiers of administrative courts, two tiers of military courts, and common courts with three tiers: 321 district courts (courts of first instance handling all petitions

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6. Between 1772 and 1918, as well as between 1939 and 1989, the Polish state either did not exist as a sovereign entity or was de facto controlled by an external power. Due to this postcolonial experience (Mayblin, Piekut, and Valentine 2016), Poles have learned to distrust the state and to view the law as an instrument of foreign oppression. Although these attitudes have steadily evolved after the democratic transition in 1989, a "culture of illegality" is still deeply entrenched (Kurczewski 2007, 35).

7. When a lustration law was ultimately passed in 1997, which mandated candidates for public offices to publicly disclose collaboration with communist secret services, many leading judges actively obstructed the measure out of a desire to avoid politicized trials and, in the minds of the public at least, to protect themselves and/or colleagues (Millard 1999). When the Constitutional Tribunal issued formal guidelines on how to apply the lustration law in May 2007, at least five out of fourteen tribunal members were revealed to have been secret informants or collaborators with the communist secret services (Gontarczyk and Cenckiewicz 2008, 238–40; see also Los and Zybortowicz 2000). These actions reflect how leading figures of the democratic transition made a conscious decision to draw a "thick line," in the words of the first noncommunist Prime Minister, Tadeusz Mazowiecki, between the past and present, and this has contributed to institutional continuity in the Polish court system.

and cases not restricted to other courts), forty-five circuit courts (courts of first and second instance hearing felonies, claims exceeding 75,000 PLN (ca. US\$20,000), and appeals from district courts), and eleven appellate courts (handling appeals from circuit courts). Within this hierarchical and highly bureaucratized structure, procedures were introduced to safeguard citizens' rights, such as allowing parties to present petitions or evidence at any stage of court proceedings. This has led to prolonged disposition of cases and backlogs, despite some ten thousand sitting judges in the country, making Poland one of the leaders in the European Union in terms of number of judges per capita.

Such factors are believed to influence public opinion of courts in Poland. Over the past twenty-five years, the number of people holding a negative opinion of the courts has generally exceeded those with a favorable opinion. According to a recent poll, only 25 percent of respondents held a positive view of the courts' functioning, with 52 percent holding a negative view (CBOS 2015, 13). Among those unhappy with their court experiences, most cited the excessive length of proceedings, followed by unfair decisions, lack of impartiality, issuing verdicts based on insufficient evidence and haste, and inability to defend oneself (CBOS 2013, 8). In academic terms, these are a mixture of instrumental performance, distributive, and procedural concerns. Moreover, two-thirds of respondents said they did not fully trust the independence of judges.

Given such challenges, the justice system has been an object of constant reform since the transition.<sup>8</sup> The difficulties of reform were illustrated most recently in an effort to convert criminal courts from an inquisitorial to an adversarial procedural model. Passed by the parliament on September 20, 2013 and implemented on July 1, 2015, the reform was hotly debated and actively obstructed by prosecutors, who felt ill-prepared to play a more active role in proceedings. Others were afraid that the adversarial system would exacerbate existing social inequalities, as those with more resources would be able to afford better legal representation (see Gardocki 2014). As a result, following its electoral success in the fall 2015 elections, the Law and Justice Party (*Prawo i Sprawiedliwość*) cancelled the transition to adversarial criminal procedure and restored the former inquisitorial system. At the same time, the new government embarked on a series of deep reforms that many believed threatened the independence of the courts and undermined the rule of law. The effort to reform the Constitutional Tribunal, in particular, drew international criticism in 2016.<sup>9</sup> In early 2017, the government undertook a major revision of the National Judicial Council designed to democratize the body and increase the representation of lower level judges—but critics charged that the proposed changes would politicize the council. Although many agree that structural changes in the Polish judiciary are necessary, it is not clear

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8. For instance, between 1989 and 2016, Poland had twenty-six different Ministers of Justice (no other office in the government experienced such turnover). Each of the ministers made efforts to reform the judiciary, which, given their short terms in office, provided little real change.

9. The reform introduced a new decision-making procedure, aimed at solving the stalemate that had paralyzed the tribunal after the Polish president refused to nominate five judges of the tribunal elected just days before the new parliament convened.

what consequences these reforms will have for judicial independence and public trust toward the courts.<sup>10</sup>

Poland, then, provides an ideal site for exploring the generalizability of the procedural justice thesis of legitimacy for courts. Unlike the United States, whose court system enjoys a long history of relative independence and stability with appreciable levels of popular support for its judiciary, Poland is a post-transition country whose court system is accustomed to political interventions and whose judiciary suffers from low levels of popular support. How this context might inflect the meaning of fair procedures for criminal defendants' perceptions of court legitimacy is the question we turn to next.

## Methods

### Sample

Data for the study were drawn from a survey of criminal defendants receiving sentences in nine district courts in Poland carried out by Court Watch Poland Foundation. Courts were selected to represent one small (Swidnica), two medium (Bialystok, Katowice), and one large (Krakow) city.<sup>11</sup> Permission to carry out interviews inside the court building was obtained from the head of each court. Data were collected in two waves, from May to July 2015 and from September 2015 to February 2016.<sup>12</sup>

Potential respondents were randomly approached before their scheduled hearing to obtain permission to be interviewed afterward. If they agreed, a pencil-and-paper survey was administered by research assistants immediately after they left the courtroom. Respondents were offered a small remuneration (10 PLN, ca. US\$2.50)

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10. Despite the uneven record of major reform efforts, the judiciary has proven sensitive to negative public perceptions and sought to improve people's experience of courts. For instance, one major innovation is the video recording of court hearings (civil hearings have been recorded since 2011; criminal hearings since 2016). Proponents of the reform hoped that increased transparency of proceedings would help discipline participants of court hearings (including judges) and contribute to enhanced public confidence in the courts. The recording was also designed to eliminate the need to dictate the hearing for the records, thus significantly cutting the time needed for a hearing. However, at the same time, some leading judges have downplayed the importance of fair treatment for the court system. As quoted at the start of the article, the President of the National Council for Judiciary, Roman Hauser, and Head of the Supreme Court Małgorzata Gersdorf, noted recently that "after the sentence someone always loses and is unhappy. Sometimes, indeed, both parties are unhappy, because even those who won did not win as much as they wanted" (Gersdorf and Hauser 2014, C7).

11. Previous research by two of the authors showed that defendants going to court in larger Polish cities (i.e., courts with a higher volume of cases) have more negative experiences than those facing less active courts (i.e., courts in smaller cities) (Pilotowski and Burdziej 2014). While we intended to examine the effect of court size and activity on defendants' perceptions, small sample sizes at the four sites required us to merge the data.

12. The initial design for the study sought to compare criminal defendants' experiences of procedural justice under the prevailing inquisitorial and planned adversarial criminal procedure. This ultimately proved unfeasible when the Law and Justice government retracted the reform and restored the inquisitorial procedure. In practice, the adversarial procedure was never fully implemented, and where it was implemented, new habits were not yet formed. Thus, the impact of the reform could not be assessed. For this reason, data from both waves were merged into one data set and are analyzed jointly.

for taking the survey. For these reasons and others (e.g., some defendants entered the courtroom from custody and could not be approached), the sample is not representative of criminal defendants in Poland. In general, it consisted of those charged with misdemeanors and less serious offenses carrying punishments of probation, suspended sentences, community service, and fines. Nevertheless, the basic sample characteristics reflect the socio-demographic profile of criminal defendants in Poland.

Overall, 247 criminal defendants were interviewed. However, nineteen respondents were eliminated from the sample because they had not yet received a verdict, and thus they were unable to assess the outcome of their cases, or substantive justice. Eliminating these individuals left a convenience sample of 228 criminal defendants receiving a verdict in criminal court. Participants were 84 percent male, with a mean age of thirty-eight. In terms of wealth, 39 percent of respondents described their financial situation as having “just enough, but could not afford larger expenses,” 25 percent declared that they “live comfortably” or “meet expenses without extras,” 18 percent said they had to “forego many things to survive,” and 8 percent said that what they earned was “not enough for basics.” Respondents in this heavily Catholic country also declared relatively high levels of religiosity: 24 percent said they attended church services once in a week and 16 percent reported once or twice in a month, with only 17 percent saying they never attended church. In terms of prior legal experience, nearly one in three respondents (29 percent) said they had previously been convicted of a crime. Detailed sample characteristics are available in Appendix 1.

## Measures

Because this study was designed to understand the procedural justice experiences of criminal defendants, the items on the survey were specifically developed to measure concepts central to past research on fairness and legitimacy. Overall, the survey included fifty-four items designed to capture eight concepts (see Appendix 2). Consistent with Sunshine and Tyler (2003) and Tyler and Huo (2002), we used two dimensions of *procedural justice* (quality of treatment and quality of decision making) and three dimensions of *legitimacy* (trust in courts, attitudes toward the law, and obligation to obey). Given past findings on the importance of substantive outcomes to court judgments (Tyler 2000), we also added *outcome satisfaction* as a measure of substantive justice, which was appropriate considering that most respondents lost their cases as a result of having received a criminal sentence.<sup>13</sup> In view of previous research showing the importance of truth in inquisitorial dispute resolution models, we also included measures of *perceived accuracy* of facts established by the judge. To capture the effects of court organization and instrumental performance considerations (the time required to attend court) that previous court research has found as significant to perceptions of justice (Feeley 1979; Rottman

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13. Our study did not track case outcomes, as we were interested in defendants' perceptions of those outcomes. Nevertheless, in Poland, somewhere around 98 percent of criminal defendants appearing at court are found guilty. Thus, we can assume that most respondents were convicted of a crime.

2010; van der Toorn, Tyler, and Jost 2011), we added measures of *perceived fairness of other actors* (prosecutor, attorney, court security, police) and *time commitment* in the case.<sup>14</sup> Considering the perceived impact of legitimacy on subsequent compliance (Hough, Jackson, and Bradford 2013), we also included a measure of *expected compliance* with sentences. Finally, given the importance of prior legal experience to perceptions of legal legitimacy (Tyler 2003), we also added measures for *previous court experience*.

The indicators were all ordinal variables with five categories. Twenty-three of the indicators had response options ranging from 1 (strongly agree) to 5 (strongly disagree) (see Appendix 2). While each of these measures of perceptions of court performance and legitimacy has been used in prior research, our survey also sought to capture unanticipated dimensions of criminal defendants' court experiences by including two open-ended questions at the end of the survey.<sup>15</sup> These questions asked respondents to narrate "what works best in courts?" and "what does not work in courts?" Responses to these open-ended questions were written down by survey administrators and later coded manually. Although the questions offered only a limited opportunity for respondents to reflect openly on their experiences, they provided some space for sharing original insights not foreseen by court researchers, an appropriate move for a field of research emphasizing the importance of laypersons' views of the law.

### **Factor Analysis**

We used reliability tests and exploratory factor analysis (EFA) to construct and validate the key latent variables in the analysis. Reliability tests help ensure that scales and indexes measure complex constructs consistently, and EFA is a statistical technique for identifying underlying latent factors through analysis of the variance

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14. Other dimensions of personal commitment could also have been considered, such as financial costs (both legal fees, as well as perceived loss of income). However, free legal aid is relatively easily available in Poland, and it can be assumed that most criminal defendants did not have to pay for legal defense.

15. Studies of procedural justice have generally been approached from a single methodological approach, statistical analyses of public opinion surveys, and many of these have been based on vignette studies that ask people how they would react to certain legal situations rather than using samples of people with actual legal experience (Tankebe 2013; Sevier 2014). While an ideal methodological approach for collecting random samples of respondents is necessary for rigorous statistical analyses, such surveys are not intended to explore the experiences and opinions of people coming into contact with courts, which other methodological approaches, such as in-depth interviews or observations of authorities in practice, could offer. When alternative methods for studying people's experiences are utilized, however, interesting results can emerge (see Carr, Napolitano, and Keating 2007; Denton 2007; Gau and Brunson 2010; Barragan et al. 2016). For instance, in a California state court study, feedback from court users, court administrators, and judicial officers regarding court procedures, focus groups of court users, ordinary citizens, and judicial officers and courts administrators were conducted in addition to a survey to ascertain the views of California courts of both court users and workers. These focus groups found that users fluent in more than one language stated that they could tell that translations were not always accurate, and this affected their confidence in court outcomes. Also, mirroring survey results on procedural justice, respondents said the courts do an outstanding job regarding three of the four procedural justice elements: respect, trust, and neutrality. But on the fourth element—voice or participation—respondents explained that they experienced difficulty in being able to "tell my story directly to the judge" (Denton 2007, 46). Thus, open-ended questions such as the two included in our survey could offer the potential to uncover new aspects of people's court experiences meaningful for thinking about the practice of authority and people's experience of it.

of observed indicators.<sup>16</sup> Although it is now accepted that employing existing scales requires confirmatory factor analysis (CFA) (Gau 2011), we performed EFA given the lingering debates about the operationalization of legitimacy (Reisig, Bratton, and Gertz 2007; Bottoms and Tankebe 2012; Johnson, Maguire, and Kuhns 2014), and the novelty of applying these concepts to a new cultural and institutional context (Polish courts).<sup>17</sup> Moreover, EFA provided us the flexibility to include aspects of interactions between judges and defendants characteristic of the inquisitorial system in our procedural justice scale and questions previously used to study attitudes toward the law in Poland (Podgorecki 1974) in our legitimacy index.

The results of the EFA led us to revise our latent variables (Table 1). With regard to *legitimacy*, we ended up with a three-factor index consisting of trust in courts and law, obligation to obey, and expected compliance. Of the original three dimensions we sought to measure (trust in courts, attitudes toward the law, and obligation to obey), trust in courts and attitudes toward the law loaded onto a single factor, which we renamed “trust in courts and law.” We then merged two items from expected compliance (“Do you plan to conform to the ruling and do what the sentence tells you to do?” and “Do you plan to appeal?”) with our legitimacy index. Compliance as a separate composite variable turned out to have insufficient reliability ( $\alpha = .58$ ),<sup>18</sup> but it fit well into the legitimacy index instead ( $\alpha = .83$ , total of eleven items).<sup>19</sup> The three extracted factors (trust in courts and law, obligation to obey, and expected compliance) together explained 61.91 percent of the total variance—the first factor explained 30.96 percent of the variance, the second 17.18 percent, and the third 13.77 percent.

For *procedural justice*, as predicted by the literature, the scale included items intended to measure quality of decision making (defendant’s voice, judge’s neutrality) and quality of treatment (respect, understanding) (Blader and Tyler 2003). Interestingly, however, the EFA indicated that some modifications of this overall conceptual scheme were needed to adapt the model to the Polish context (Table 2). For one,

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16. In response to feedback from anonymous reviewers, apart from the EFA reported in Tables 1 and 2 using Varimax rotation, we have performed the EFAs using oblique rotation. For legitimacy, these new analyses essentially confirmed the factor loadings for expected compliance and trust in courts and the law. Uniquely, however, Items 41 and 42 stand out from other measures of trust, and they could perhaps be more aptly interpreted as measures of legal cynicism (see, e.g., Carr, Napolitano, and Keating 2007). For the procedural justice scale, using oblique rotation (both Oblimin and Promax) did not have any impact on the explained variance and the number of factors—factor loadings for each item were almost identical to loadings obtained with Varimax rotation.

17. Here, we follow Sun et al. who, in a study of procedural justice and police legitimacy in China, found that “convergence between Tyler’s two scales of police legitimacy, obligation to obey and trust in the police, was low” and that respondents “conflated the concepts of distributive justice and procedural justice” (2017, 472). These findings, the authors contend, raise the issue of imported versus indigenous measures and the need to “develop culture-specific measures to further elaborate Tyler’s process-based model of policing.” This further informed our decision to use exploratory rather than confirmatory factor analysis.

18. We chose to use Cronbach’s alpha of .70 as a cutoff for determining scale reliability. The literature is inconsistent regarding what threshold value is acceptable (whether .70 or .60). Hair et al. (1998) state that it is acceptable in exploratory research to report alphas between .60 and .70, since these values may provide a hint for interpretation, but we are choosing here to utilize the more stringent threshold.

19. This is not necessarily surprising, as our compliance measure included a question on moral alignment, which has been used in the past to measure legitimacy (see Jackson et al. 2011, 2012; Hough, Jackson, and Bradford 2013; Tyler and Jackson 2014).

**TABLE 1.**  
**Exploratory Factor Analysis of Legitimacy Index**

	Factor		
	1	2	3
<i>Trust in Courts and the Law</i> ( $\alpha = .73$ )			
When faced with laws you consider unjust, you should only pretend to follow them, while in practice going around them.	.70		
Laws are made to be broken.	.62		.38
Courts are intended to protect people.	.73		
Most people in Poland obey the law.	.75		
Courts generally serve the community well.	.80		
Judges in Poland try hard to understand cases and render a just decision.	.79	.36	
<i>Expected Compliance</i> ( $\alpha = .69$ )			
Do you plan to conform to the ruling and do what the sentence tells you to do?		.82	
Do you plan to appeal?		.81	
<i>Obligation to Obey</i> ( $\alpha = .64$ )			
Do you plan to avoid this kind of behavior that led to your prosecution in future?			.39
Court decisions should always be respected, even if you disagree with them.			.75
Courts are deserving of our respect.			.75

Note: Principal components analysis, Varimax rotation. Only factor loadings  $> .35$  are displayed.

items designed to measure voice, respect, and neutrality all loaded onto one factor, which we term “quality of treatment by the judge.” What united these diverging elements was defendants’ direct interaction with the judge. Meanwhile, items intended to measure quality of treatment by court actors other than judges loaded onto a separate factor, which we named “quality of treatment by other actors.” This result may be reflective of the active role of the judge in inquisitorial, continental court systems, including the Polish system, as compared with adversarial systems.

In addition, the EFA also revealed other dimensions of *procedural justice*. These included three indicators measuring perceptions of defendants’ influence on proceedings, which we call “influence.” Additionally, while previous studies have found understanding to be a process-based factor comprising quality of treatment, our analysis showed these indicators loading onto two separate factors, which we name “understanding of proceedings” and “understanding of sentences.” These separate factors may reflect the specific legal experiences of criminal defendants as respondents. For people with criminal court experience, understanding the process being conducted and understanding the punishment received may constitute distinct legal experiences, which they consider separately from how they were treated by the judge overall. The five factors that were extracted together explained 64.58 percent of the total variance—the first factor explained 16.12 percent of the variation, the second 13.63 percent, the third 13.1 percent, the fourth 11.61 percent, and the fifth 10.13 percent.

**TABLE 2.**  
**Exploratory Factor Analysis of the Procedural Justice Scale**

	Factor				
	1	2	3	4	5
<i>Quality of Treatment by the Judge</i> ( $\alpha = .85$ )					
During the hearing, were you able to sufficiently present your evidence in the case, either in person or through your legal representative?	.64		.42		
Did you feel the judge listened to you carefully?	.68				
Was the judge biased against you?	.76				
Was the judge polite to you?	.71				
How fairly were you treated by the judge?	.62				
Did the court take into consideration arguments presented by both parties?	.47				
<i>Quality of Treatment by Other Actors</i> ( $\alpha = .70$ )					
How fairly were you treated by the prosecutor?		.58			
How fairly were you treated by the defense attorney?		.56			
How fairly were you treated by the court security?		.86			
How fairly were you treated by the police?		.79			
<i>Influence</i> ( $\alpha = .75$ )					
How big an influence did you or your legal representative have upon the way the case was handled?			.77		
What influence did you or your legal representative have upon the decision?			.78		
Did the court take into consideration the evidence you presented?			.59		.46
<i>Understanding the Proceeding</i> ( $\alpha = .72$ )					
Did you feel that you understood what was going on?				.70	
Did the judge explain the aim of the hearing or present a plan for it?				.75	
Did the judge explain procedural issues or legal terms he or she used in a way that was clear to you?				.68	
<i>Understanding the Sentence</i> ( $\alpha = .64$ )					
Did you fully understand the content and the meaning of your sentence?					.75
Did the judge make sure you understood the sentence?					.72

Note: Principal components analysis, Varimax rotation. Only factor loadings  $> .40$  are displayed.

The *outcome satisfaction* scale ultimately encompassed both questions measuring perceived outcome satisfaction (“Are you satisfied with the sentence you received today?”; “How do you evaluate the court’s decision compared to what you had expected?”) as well as the court’s ability to establish truth (i.e., *perceived accuracy*) in the case (“What do you think about the court’s decision: Was it right?”; “Do you think the court overlooked some evidence that was important to your case?”; and “Did the court make an accurate finding in your case?”). This five-item scale had good reliability ( $\alpha = .86$ ). While this composition of the scale is somewhat surprising, it is consistent with past research that has found perceived accuracy to be closely tied to perceptions of fairness in inquisitorial legal systems (see Sevier 2014), and it may also reflect the influence of using criminal defendants rather

than third-party observers as respondents, as those who are satisfied with an outcome are more likely to believe the decision behind it was right.

Finally, our last variable was *time commitment*. It included three items designed to measure the amount of time our respondents believed they had needed to dedicate to their cases (“How long has your case been going on before the court?”; “Including today, how many times have you visited the court with your current case?”; “Do you think the court has taken too long to process your case?”). The scale had good reliability ( $\alpha = .78$ ), with higher values indicating a shorter amount of time respondents reported spending on their cases.

#### IV. RESULTS

Having refined the variables to be examined, we next moved to test the process-based hypothesis that procedural fairness matters more to perceptions of legitimacy than other experiential factors. The correlation matrix in Table 3 shows how our key variables—legitimacy, procedural justice, outcome satisfaction, and time commitment—correlated. In terms of demographic variables, age was not correlated, while sex was—men were more critical about their experience of both procedural justice and outcome satisfaction, and they tended to have lower perceptions of court legitimacy. Perceived financial standing, education, and religiosity were also correlated with procedural justice and legitimacy—those who are wealthier, better educated, and more religious tended to judge their legal experiences and the court system in general more favorably. Finally, previous conviction was negatively correlated with legitimacy, which reveals how those receiving convictions in the past were more likely to assess the court system harshly.

**TABLE 3.**  
Correlations Between Latent Variables

	M	SD	1	2	3	4	5	6	7	8	9
Legitimacy	3.50	.70									
Procedural justice	3.57	.65	.61**								
Outcome satisfaction	14.66	5.55	.59**	.74**							
Time commitment	3.44	1.20	.26**	.18**	.28**						
Sex	1.84	.37	-.26**	-.20**	-.20**	.01					
Age	38.04	11.51	0.13	-.08	-.07	.11	-.06				
Education	4.15	2.43	.18**	.22**	.13	.05	-.19**	.06			
Religiosity	2.93	.93	.20**	.11	.04	.02	-.15*	.22**	.17**		
Financial situation	2.49	1.09	.14*	.16*	.08	.02	-.04	-.05	.33**	.05	
Previous conviction	2.30	.45	-.36**	-.11	-.09	.07	.10	-.08	-.34**	-.10	-.22**

\*\*Significant at 0.01 (pairwise); \*significant at 0.05 (pairwise).

**TABLE 4.**  
**Linear Regression Model for Perceived Court Legitimacy**

	Non-Standardized Coefficients		Standardized Coefficients	t	P-Value
	B	Standard Error	$\beta$		
(Constant)	2.34	.39		5.95	< .001
Procedural justice	.42	.08	.39	5.48	< .001
Outcome satisfaction	.03	.01	.24	3.33	< .001
Time commitment	.07	.03	.12	2.48	.014
Sex	-.17	.09	-.09	-1.91	.058
Age	.01	.00	.14	2.89	.004
Education	-.03	.02	-.11	-2.00	.047
Church attendance	.05	.03	.09	1.77	.078
Financial situation	.02	.04	.03	.67	.500
Previous conviction	-.47	.08	-.30	-6.14	< .001

Note: Dependent variable: Legitimacy.

A single OLS regression analysis was then performed. The regression model proved significant and explained 55 percent of the variability of courts' perceived legitimacy ( $R^2 = .546$ ;  $SE = .48$ ,  $F = 29.98$ ,  $p < .01$ ) (Table 4). Due to high correlations between key variables (legitimacy, procedural justice, and outcome satisfaction), the variance inflation factor (VIF) and tolerance level were tested. The highest VIF was 2.438 (mean VIF = 1.44), and the tolerance test exceeded .40, demonstrating that multicollinearity was not an issue. Consistent with the process-based model, the strongest relationship to court legitimacy was procedural justice ( $\beta = .39$ ). This provides strong support for the thesis that perceived fairness of decision making and treatment by authorities matters most for criminal defendants. Following procedural justice, previous conviction possessed the next strongest relationship with legitimacy ( $\beta = -.30$ ). This suggests that a negative prior outcome at criminal court is likely to decrease views of the legitimacy of the court and law more generally. Outcome satisfaction (including the court's perceived accuracy) was the third most important factor ( $\beta = .24$ ). This contradicts findings from past studies of courts (see, e.g., Casper, Tyler, and Fisher 1988, 493), and the inquisitorial systems in particular, which found that although procedural fairness was important, perceptions of accuracy and winning and losing mattered most to defendants. Three other factors also proved significant: age ( $\beta = .14$ ), time committed to the case ( $\beta = .12$ ), and education ( $\beta = -.11$ ). These findings suggest that older defendants were more likely than younger defendants to perceive courts and the law system as legitimate, that those who dedicated less time to a case perceived the courts as more legitimate, and that the more educated tended to score courts lower on the legitimacy scale than those with less education. Finally, while gender and church attendance did not prove statistically significant, their  $p$ -values were close enough ( $p = .058$  for gender,  $p = .078$  for church attendance) to note that women and regular churchgoers in the predominantly Catholic country were more likely to see courts as legitimate.

**TABLE 5.**  
**Frequency Distribution of Open-Ended Responses on Court Experience**

Experiences	Frequency	%
<i>Negative Experiences (n = 119)</i>		
Procedural justice	52	43.7
Time commitment	43	36.1
Court organization	12	10.1
Other	8	6.7
Outcome satisfaction	7	5.9
Competence of judges/attorneys	4	3.4
Helpfulness of staff	1	.9
Respect for rights	1	.9
Corruption	1	.9
<i>Positive Experiences (n = 70)</i>		
Procedural justice	25	35.7
Time commitment	24	34.3
Outcome satisfaction	7	10.0
Other	5	6.1
Competence of judges/attorneys	4	5.7
Quality of facilities	2	2.8
Court organization	1	1.4
Helpfulness of staff	1	1.4

Responses to the two open-ended questions, in turn, provide a deeper perspective on criminal defendants' legal experiences in Poland. Overall, respondents listed 119 comments on negative aspects of their court experience ("what does not work") and seventy comments indicating positive aspects ("what works well") (Table 5). The coding of respondents' answers to both questions confirmed that, as in common law countries with stable political history, procedural justice figures centrally among participants of an inquisitorial, continental law system in a post-transition country. For instance, fifty-two of the 119 critical comments noted elements related to quality of treatment or decision making. These included comments such as "They treated me like a homeless man and did not let me speak at all" and "They judge you by the way you look, they do not let you speak." Similarly, twenty-five of the seventy positive comments concerning court experience related to quality of treatment or decision making by judges, such as "I was listened to and had the opportunity to present my arguments" and "The best impression was made on me by the lack of bias on the part of the judge, and that I could easily clarify my position and point of view."

If the qualitative data support this central finding, they also offer novel insights into what defendants find meaningful in their court experiences. For instance, while the instrumental performance factor of time committed to cases demonstrated only a slight influence on people's perceived legitimacy of courts in the quantitative analysis, it figured more centrally in their open-ended responses. Forty-three of the 119 critical comments identified it as a concern ("[it took] too long to deal with a simple matter," "long waiting time for the hearing"), while

twenty-four of the seventy positive comments listed it (“lack of tardiness and efficient conduct of the trial,” “Fast, efficient processing of the case. The competence of the court”).

Similar in this regard was another element of court that respondents were critical of—court organization. Twelve out of 119 critical comments described how a lack of clear information about schedules and locations of hearings frustrated them (“I did not know what to do, where to go, and what the court wanted me to do,” “there was no information about the change of the courtroom”). This is an interesting finding, since organization has not commonly figured as a dimension researchers have explored in people’s legal experiences, and there were no items dedicated to it in the survey instrument. Also interesting is the fact that organization did not appear as a prominent issue in people’s positive assessments of court. Only one of seventy positive comments mentioned it. This suggests, perhaps, that the efficient organization of the court’s work is something that is expected by people and is only noticed when absent.

Finally, the open-ended responses presented additional findings that, if small in number, are noteworthy for their originality. For instance, on the positive side of the ledger, a handful of respondents lauded the competence of court personnel (“All of them are fairly well educated”), the quality of facilities (“I liked the door and furniture in courtrooms”), or staff (“Friendly staff. Help in finding courtroom”). Similar numbers expressed concerns with the competence of court personnel (“the courts do not know the practice and theory of construction law”), violations of legal rights (“No respect for the fundamental principle of the presumption of innocence”), and corruption (“courts render unjust judgments, corruption is everywhere”).<sup>20</sup> These comments provide direction for future research, which we discuss below.

## V. DISCUSSION

The findings confirm the procedural justice thesis for defendants receiving criminal sanction at courts operating under an inquisitorial system in a transition country. If this is not a radical finding, given the amount of prior evidence supporting the procedural justice thesis, it bears noting that few previous studies have confirmed this with criminal defendants or in a post-transition society. Conventional thinking has held, and empirical research has supported (Benesh and Howell 2001), the idea that substantive outcomes—winning and losing—are what matter to criminal defendants. As the quote from Supreme Court Justice Małgorzata Gersdorf at the beginning of this article reasons, “after the sentence, someone always loses and

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20. Coding is often contentious in qualitative analysis, and some readers might object to differentiating “violations of legal rights” from the “quality of decision making” dimension of procedural justice, or “helpfulness of staff” from the “quality of treatment” of procedural justice. In coding these data, we have erred on the side of being more exclusive and specific rather than less in an effort to bring new or lesser considered aspects of court experience to light. With this in mind, a response explicitly invoking “rights,” rather than simply noting the soundness of a judicial decision, can be read as distinctive from procedural justice, as can another noting the performance of “staff,” whose conduct is generally not considered as part of procedural justice.

is unhappy. Sometimes, indeed, both parties are unhappy, because even those who won did not win as much as they wanted.” And this logic is thought to apply even more so in an inquisitorial justice system, which is argued to be more concerned with truth and efficiency than fairness (Anderson and Otto 2003; Sevier 2014). But this is not the case for this sample of criminal defendants in Poland—procedural justice matters more than outcome satisfaction (including the court’s ability to establish truth).

It could be argued that this finding simply reflects the particular sample selected, defendants who had, by and large, “lost” by virtue of having been found guilty and sentenced. Perhaps these defendants acknowledged their guilt and felt a certain amount of relief at receiving a light sentence, and a different sample comprising both winners and losers might reveal a greater impact for substantive outcomes. Also, respondents were engaged in relatively low-stake cases. Previous research shows that when stakes are higher, outcome favorability plays a larger role in shaping views of legitimacy. But these findings suggest that procedural justice matters to those with higher stakes in judicial outcomes (defendants), just as past research has shown it matters to those with lower stakes (jurors) (Benesh and Howell 2001; Benesh 2006; Longazel, Parker, and Sun 2011).

Of course, both outcome satisfaction and prior conviction showed sizable significant relationships with legitimacy as well. So, perceptions of winning and losing still count. The importance of prior convictions suggests that negative past experiences (criminal convictions) leave a lasting negative impression of courts.<sup>21</sup> This topic deserves further exploration. For instance, it would also be worthwhile to examine more serious criminal cases or civil cases, as stakes there are often likely to be higher and issues of truth and culpability more meaningful to litigants.

In addition to confirming the importance of fair treatment, these findings also provide insight into what about fairness is most meaningful for defendants. On this score, Polish citizens seem to place special emphasis on their interactions with judges. This is illustrated by the factor analysis of the procedural justice scale, which showed various elements of procedural justice (such as voice, neutrality, and respect) loading onto the same factor, which we identified as *quality of treatment by the judge*. This tendency may be a feature of continental procedural law, which assigns a more active role to the judge than in the adversarial, common law system. Judges may have more room both to display procedural fairness and to be perceived as unfair. Future research could look more systematically at how different models of judging (including differences between continental and common law systems as well as different levels within the same system) produce different experiences of fairness and views of legitimacy. In Poland, where magistrates are trained to be masters of the law and view themselves as legal experts solving legal puzzles, judges may not be developing the soft skills and commonsense necessary for solving disputes between parties. The strong, official formalism of Polish judges, intended to

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21. We are unable to read too much into the meaning of past convictions for respondents in this study. It is possible that the negative prior outcome (having been convicted) makes them more likely to hold negative views of court legitimacy. However, it is also possible that the absence of procedural justice in an earlier case that resulted in a conviction dampens their views of courts. The cross-sectional design of our study and single-item measure of past conviction preclude us from being able to disentangle these effects.

safeguard impartiality and fairness, may explain some of the emotional detachment perceived by respondents in our study when (in open-ended questions) they complained about the “indifference of the judge” or that “the judge [was] not interested at all.” Interestingly, from the viewpoint of the legal system, indifferent, uninterested judging is a success. However, from the viewpoints of defendants, it is a sign of an uncaring bureaucracy.

This last point is particularly important, as it suggests that a number of recent reforms introduced in Poland to improve the judiciary may be misguided. Complex procedural law and frequent legal changes, combined with traditional judicial training (training judges to be experts at law, but without adequate communicative and other soft skills) and court structures (a hierarchy emphasizing compliance with standards, and conformity with peer pressure over empathy with litigants), effectively prevent some citizens from experiencing justice. Paradoxically then, while Polish judges may do well in terms of fair treatment defined formally (e.g., emotional detachment), this might actually lead to the opposite interpretation by court users, and the legitimacy of courts as an institution suffers as a result. Procedural justice, in turn, provides a path forward for building legitimacy through improving the quality of treatment that people encounter as they receive negative outcomes at court.

If this study confirms the importance of procedural justice in court settings outside WEIRD (i.e., White Educated Industrialized Rich Democracies; see Henrich, Heine, and Norenzayan 2010) countries (and respondents), other notable findings should not be overlooked. One of these concerns the enduring importance of instrumental performance factors, such as the time that people put into their court cases. In some ways, the emphasis on procedural justice in socio-legal studies has come at the cost of such instrumental concerns, which Rottman (2010) notes, were core foci of the judiciary in decades past. And while time committed to cases exercised less influence on perceptions of legitimacy in our regression analysis, it was clearly on the minds of respondents in the open-ended questions. These findings illustrate the lasting lessons of Feeley’s (1979) seminal work that the “process is the punishment” for many litigants. Future research could explore this issue further, relying not only on subjective measures of time commitment (as we did in this study), but also on objective measures culled from court records to investigate the impact of court timeliness on users’ perceptions of legitimacy.

In addition, the identification of other influences on perceptions of legitimacy, even if less influential, point to additional avenues for future research. More specifically, age was shown to have a positive effect on legitimacy, while education had a negative effect. This might suggest that older defendants, including those who remember criminal courts under communist rule, value the current system more than their younger counterparts. And contrary to previous research on the legitimacy of political systems (Domanski 2005), we found the lesser educated tend to rate the legitimacy of courts and law more highly. This may suggest that the mechanisms of legitimation for more abstract entities (such as political systems) may differ from the legitimation of particular institutions of authority (such as the courts). Whether these trends hold in other sites both within and outside Poland is a topic for future studies to explore.

The particularities of studying procedural justice and legitimacy in Poland also surface in the factor analysis. Standard indices of fairness take quality of decision making and quality of treatment as distinct dimensions, with understanding comprising the latter. This study found that quality of decision making and treatment loaded onto a single factor—"quality of treatment by the judge"—distinct from "quality of treatment by other actors." Further, items measuring understanding loaded onto two separate factors—"understanding the process" and "understanding the sentence." As noted earlier, the central place of judges in this study may well reflect the inquisitorial model followed in Poland, while the bifurcated structure of understanding may reflect how fairness is experienced in a court setting more generally, where the processes for determining guilt and punishment are distinct (in contrast to policing, where investigations and punishments tend to happen in the same encounter). This suggests a way in which measures of procedural justice may need to be revised for specific institutional and geographic contexts.

This study is clearly not without its limitations. Most centrally, the defendants participating in this study are drawn from a convenience sample rather than a random sample. This leaves open the possibility that the sample is biased toward those who, because they value personal interactions more (and would be more impressed by procedural justice), agreed to participate in the study. Second, the survey instrument used in the study relied on more conventional measures of legitimacy, based on obligation to obey, trust in authorities, and attitudes toward the law, which potentially overlooks other dimensions, such as moral alignment, highlighted in recent debates in the field. Third, as a cross-sectional study that did not manipulate judicial performance, it is unable to make causal claims regarding the relationship between procedural justice and legitimacy (Nagin and Telep 2017).

These limitations need to be addressed in future research on this topic. However, none of them put at risk the major finding of this study, which is that procedural justice matters for perceptions of legitimacy among a sample of criminal court defendants receiving criminal sentences under an inquisitorial court system in a post-transition society. This invites more research in the Polish context (as well as in other countries with the experience of recent transition to democratic rule) to investigate the circumstances in which procedural fairness can be conducive to further public confidence in authorities.

## VI. CONCLUSION

Research on the importance of fair procedures to people's assessment of authorities and the law has been central in the recent rethinking of justice and crime control. To date, few studies have considered the process-based thesis in court settings and countries outside North America and Western Europe. Addressing this gap, the present study has shown procedural fairness is indeed a significant factor tied to beliefs and attitudes toward courts and the law of criminal defendants in Poland, a post-transition country. Thus, it helps corroborate the hypothesis that procedural fairness is a universal concern of all people, not only limited to Western democracies.

The study's data show the importance of perceived fairness for Polish defendants at court. This resonates with findings from recent opinion polls that show that respondents with recent direct contact with court tend to assess courts more favorably than those who only rely on media coverage. Thus, evidence is presented that direct contact with a public institution acting in a fair and efficient manner can be a trust-building experience. More systematic application of procedural justice principles on the part of the judiciary could help enhance these positive experiences, strengthening both the position of courts vis-à-vis the executive branch and the democratic rule of law in general.

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## APPENDIX 1: SAMPLE CHARACTERISTICS

	%	N
Total sample		228
<i>Gender</i>		
Male	83.8	191
Female	16.2	37
<i>Age</i>		
18–25	14.5	33
26–35	28.5	65
36–45	29.8	68
46–55	13.6	31
56–65	7.5	17
Above 65	1.8	4
No data	4.4	10
<i>Educational attainment</i>		
Elementary	9.6	22
Vocational	28.1	64
Secondary	41.2	94
Higher	19.7	45
No data	1.3	3
<i>Financial situation</i>		
Not enough for basics	8.3	19
Just enough	18.4	42
Meet expenses without extras	38.6	88
Live comfortably	25.5	58
No data	9.2	21
<i>Church attendance</i>		
Never	18.0	41
Several times per year	40.4	92
Once–twice per month	15.8	36
Once a week	21.1	48
Several times a week	2.6	6
No data	2.2	5
<i>Previous conviction</i>		
Yes	28.5	65
No	68.0	155
No data	3.5	8
<i>First court case</i>		
Yes	60.1	137
No	36.8	84
No data	3.1	7
<i>Place of residence</i>		
Village	9.6	22
Small city (up to 20,000 inhabitants)	10.1	23
Medium city (20,000–100,000)	32.5	74
Large city (more than 100,000)	46.9	107
No data	0.9	2

## APPENDIX 2: RELATIVE FREQUENCIES FOR TWENTY-NINE SURVEY ITEMS

	Coding Scheme	1	2	3	4	5
5. Do you think the court has taken too long to process your case?	1	18.9	33.8	7.5	19.7	20.2
6. During the hearing, were you able to sufficiently present your evidence in the case, either in person or through your legal representative?	2	8.3	20.6	8.3	38.2	24.6
7. Did you feel the judge listened to you carefully?	2	7.5	20.2	6.6	37.7	28.1
8. Was the judge biased against you?	1	8.3	14.5	10.5	35.1	31.6
9. Was the judge polite to you?	2	3.9	12.7	7.9	46.5	28.9
12. How big an influence did you or your legal representative have upon the way the case was handled?	3	11.8	27.6	30.7	19.7	10.1
13. Did you feel you understood what was going on in the courtroom?	2	2.2	6.1	7.5	46.9	37.3
14. Did the judge explain the aim of the hearing or present a plan for it?	2	4.8	7.0	7.0	45.6	35.5
15. Did the judge explain procedural issues or legal terms he or she used in a way that was clear to you?	2	5.3	9.2	8.3	47.4	29.8
21. Are you satisfied with the sentence you received today?	2	20.6	15.8	20.2	26.8	16.7
22. What do you think about the court's decision: Was it right?	2	11.4	19.3	14.0	36.0	19.3
24. Do you think the court overlooked some evidence that was important to your case?	1	7.0	11.8	14.5	46.1	20.6
25. Did the court make an accurate finding in your case?	2	11.0	15.8	12.7	42.1	18.4
26. Did the court take into consideration arguments presented by both parties?	2	11.0	22.4	18.0	32.5	16.2
31. What influence did you or your legal representative have upon the court's decision?	3	15.8	32.9	25.4	21.1	4.8
32. Did the court take into consideration the evidence you presented?	2	11.8	14.9	12.7	41.2	19.3
33. Did you fully understand the content and the meaning of your sentence?	2	2.2	3.1	2.2	42.1	50.4
34. Did the judge make sure you understood the sentence?	2	4.8	7.5	7.5	39.0	41.2
35. Do you plan to conform to the ruling and do what the sentence tells you to do?	2	4.8	6.6	5.3	39.9	43.4
36. Do you plan to appeal?	1	10.5	10.5	14.0	34.6	30.3

(Continued)

## Appendix 2 (Continued)

	Coding Scheme	1	2	3	4	5
37. Do you plan to avoid the type of behavior that led to your prosecution in the future?	2	2.6	7.5	13.2	30.7	46.1
38. Courts are intended to protect people.	2	8.3	15.8	19.3	32.5	24.1
39. Court decisions should always be respected, even if you disagree with them.	2	8.8	12.7	29.4	25.9	23.2
40. Courts are deserving of our respect.	2	5.3	9.2	23.2	37.3	25.0
41. When faced with laws you consider unjust, you should only pretend to follow them, while in practice going around them.	1	14.5	20.2	32.9	19.3	13.2
42. Laws are made to be broken.	1	3.9	4.4	22.8	36.0	32.9
43. Most people in Poland obey the law.	2	16.7	31.6	23.7	20.2	7.9
44. Courts generally serve the communities well.	2	5.7	15.4	38.6	28.5	11.8
45. Judges in Poland try hard to understand cases and render a just decision.	2	9.2	16.7	29.8	32.0	12.3

<sup>1</sup>Coding scheme 1: 1 = strongly agree, 2 = agree, 3 = unsure, 4 = disagree, and 5 = strongly disagree.

<sup>2</sup>Coding scheme 2: 1 = strongly disagree, 2 = disagree, 3 = unsure, 4 = agree, and 5 = strongly agree.

<sup>3</sup>Coding scheme 3: 1 = very little, 2 = little, 3 = unsure, 4 = large, 5 = very large.