Chapter 4

Regulations, fairness and trust

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Citizens’ perception of fairness, in process as much as in outcome, is a critical dimension of trust. People must feel they have a real voice, be treated with respect, and receive necessary explanations. Positive perceptions of fairness lead to greater acceptance of agency decisions, better compliance with regulations, and more co-operative behaviour in dealing with agents of the government. The reverse also holds: citizens are more likely to accept negative outcomes, such as financial penalties, if they feel that they have been treated fairly. In general terms, low trust generates extra transaction costs for citizens, businesses and government. This chapter looks at empirical evidence on the links between good regulatory practice and trust in public policy.

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.
Introduction: The human dimension of regulation

Today only four out of ten citizens in OECD countries say they have confidence in their national authorities. Given that regulation is one of the most important interfaces between citizens and government, the ability of the regulatory process to engender public trust is crucial to the broader issue of trust in public institutions (OECD, 2015a). The framework presented in Chapter 1 includes several dimensions of trust that are important to ensure confidence in the regulatory process. These include factors relating to both competence (responsiveness and reliability) and values (integrity and transparency). This chapter, however, focuses in particular on the third value dimension of fairness, in both the regulatory process and the outcomes that it generates.

The disconnect between improved regulatory practice on the one hand and lower trust on the other can have important policy consequences. When citizens have experiences with government that leave them feeling unfairly treated, they emerge from those experiences less willing to comply with regulations and with less trust in government. These negative attitudes in turn make enforcement of regulations more difficult and can make the entire regulatory process less effective. In fact, people are capable of acting against their own financial interests where they perceive that a system is unfair. Individuals or organisations that feel unfairly treated may decide not to cooperate even if the consequences are negative for them (Giacalone and Greenberg, 1997; Lind, 1997; Lind et al., 2000). Conversely, when citizens feel fairly treated they are generally willing to incur costs for the greater good provided they feel confident that others are doing the same (Lunn, 2014). This is an important general point with respect to how trust influences public policy: in an environment of high trust, it is possible to undertake reforms that are long term, that are ambitious, and that potentially include short-term sacrifices for long-term gains.

Research in this area has identified several elements of process and practice that invariably affect perceptions of fair or unfair treatment in interactions with government agencies. First, the research shows that when people feel treated fairly by government, their immediate reactions make enforcement of regulations and decisions easier. Perceptions of fair process lead to greater acceptance of agency decisions, better compliance with regulations, and more co-operative behaviour in dealing with agents of the government (Lind, et al., 1993; See, 2009). In practical terms, these fairness effects suggest that if perceived procedural justice elements are built into the design and administration of a regulation, that regulation will in fact work better and be easier and cheaper to enforce. While the objective fairness of
outcomes is of course an important policy consideration, subjective
judgements of the fairness of outcomes are less important psychologically
than subjective judgements of the fairness of process. This reinforces the
concept that trust more broadly is as much about perception and subjective
interpretation as it is about facts and direct experience.

At the same time, the fairness judgements considered here are personal
reactions to real individual experiences with government: the research
described has studied how people arrive at perceptions of process fairness
from their personal experiences and how these perceptions then affect other
attitudes and actions.

People are quick to form fairness judgements, which have pronounced
effects on their subsequent attitudes and behaviour. There is an emerging
consensus that fair treatment is interpreted as an indication of one’s
inclusion and status in society, while unfair treatment is interpreted as a
warning sign of potential exclusion and exploitation. Most people have
relatively few personal experiences with their government outside of
encounters with police and the officials and agents who enforce government
regulations. If, as psychologists suppose, these people use fair or unfair
treatment in these encounters to “diagnose” the health of their inclusion in
the state or their status in relation to the most powerful social entity in their
lives, it is hardly surprising that fairness perceptions inform and drive
behaviour towards and attitudes about the government including the level of
trust that public institutions inspire.

Fair process effects – the positive premium generated by the judgement
that a process was fair – have been shown to increase loyalty to leaders,
make co-operative action more likely, and increase trust in the decision
maker, the government, and justice institutions. Perceptions of fairness in
lawmaking and law enforcement have been shown to affect people’s general
willingness to obey laws, including willingness to respect tax laws and rules.
Lind, for example, finds a strong empirical link between a perception of
fairness in process and acceptance of legal decisions, even among the losers.
But just as processes that are seen as fair promote positive reactions to
experiences with regulation, processes that are seen as unfair produce a
variety of undesirable reactions, including dissatisfaction with the agency
and officials encountered, rejection of the decision, distrust in government
more generally, including in democratic processes, and antisocial behaviour.

Trust and fairness in the design of regulations

Perceptions of fair treatment can play a role in virtually any context in
which citizens interact with public institutions; as such, they represent an
important driver of trust more generally. In the realm of regulation, such interactions occur for the most part in two settings: when governments seek citizen input on proposed regulations, and when citizens encounter enforcement actions, hearings, and appellate procedures as regulations are administered. In either of these categories of citizen engagement with regulation, perceptions of fairness can be improved by procedures and official behaviour that promote the sentiment that citizens’ views have been heard and considered, that they have been treated with dignity and respect, and that they received honest and helpful explanations.

While meetings and hearings designed to engender feelings of fairness theoretically promote acceptance of regulations, sometimes the reality of the process or its enactment falls short of this goal and problems ensue. For example, in the US state of North Carolina, a series of stakeholder meetings on environmental issues were designed to gather input on new regulations controlling pollution in a river system (Maguire and Lind, 2003). The policy makers who held the meetings hoped that they would lead to feelings of voice and fairness, and thus would enhance acceptance of the regulations ultimately decided. However, interviews with citizens who attended the meetings suggested that many did not see the process as fair. They felt that participants did not have sufficient time to digest and react to the rather complicated information and environmental issues involved. This counteracted any fairness advantages of the process and negated any fair process effect that might otherwise have resulted from the new hearing process.

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

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

The keys to fair process: Voice, respect and explanation

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

Voice

The earliest research on procedural justice and fair process effects involved experiments and surveys comparing procedures that did or did not guarantee people a chance to present their views (e.g., Walker et al., 1974). This element of process fairness – termed “voice” in the research literature – remains the most extensively researched and arguably the most powerful precondition for perceived procedural fairness. Innovations that enhance voice have great potential to improve perceptions of justice and thus to generate positive changes in attitudes and behaviour. However, research on voice makes it clear that it is not enough just to allow for more raw input or comment: there must also be some indication that the input was actually given consideration.

Voice does not improve perceived fairness if it is simply an opportunity to comment without response or reaction from the agency or decision maker. As the relevant literature has developed, it has become clear that voice effects occur only when there is reason to believe that voiced views have been considered by the person or agency that is making decisions (Tyler, 1987). For fairness benefits to be realised, the decision maker must actually demonstrate that consideration was given and the voiced views “processed.” Again, note that this is not the same as having one’s voiced views accepted – a decision maker, or an agent of regulatory administration, can show that
he or she has heard and understood the views voiced by the citizen but still render a decision contrary to what the citizen wants.

Note also that the need for there to be evidence of consideration means that the comment meetings and online comment opportunities sometimes used in designing regulation may fail to instil a sense of voice. There is no any empirical evidence on this point, but concern would seem warranted based on extrapolation from voice effects in policy contexts that have been studied. To be able to speak at a hearing or to be allowed to write one’s views on a website or in a letter only fulfils half of what is needed for voice to enhance perceived fairness; there must also be some indication that the comments have been considered. Regulators may need to provide those commenting with a report on the views expressed, how they were considered, and whether and how they were incorporated into the regulation.

Figure 4.1 illustrates obligations in OECD countries to provide feedback on consultation comments. In twelve member countries regulators are required to publish a response to the comments on line with respect to the development of primary laws. Such a requirement exists in fifteen countries for subordinate regulations. Only in a few countries (seven for primary laws and ten for subordinate regulations), though, do regulators respond directly to those making comments. This takes the form of individual answers to each author of consultation comments in only four countries for both primary laws and subordinate regulations. In other countries a summary responding to the most important or significant comments is published on line.¹
Thus, while there are procedures and rules that mandate consideration of voiced comments in over half of the OECD countries, it seems that individuals making comments often do not “see” this consideration. It is not difficult to imagine that many citizens actually have their voice considered without knowing that their views were incorporated into the design of regulations. The online comment procedures open to all citizens may therefore be an example of justice done, but not of justice seen to be done.

**Respect**

Perceptions of fair process are enhanced when people feel that they are treated politely and with respect in the course of interaction with government. Perceived respect has been shown to be very powerful in shaping procedural justice judgements. A study in US state courts compared litigants’ reactions to four different procedures for resolving civil disputes, and found that the litigants’ belief that their case had been handled in a respectful manner was the single most powerful determinant of fairness perceptions and of preferences for using one procedure over another (Lind et
al., 1990; MacCoun et al., 1988). The Australian Queensland Community Engagement Trial (QCET) random stop experiment provides another example of behaviour that was designed to enhance procedural justice reactions by promoting polite and respectful treatment. In designing the fair treatment condition in the QCET study, the researchers and police worked together on a "script" that would modify standard police practices in ways that promoted perceived procedural fairness. They decided that respect could be conveyed by paying special attention to polite language and having the officer crouch down while speaking to the seated motorist (to bring the officer’s face to eye level for the motorist). These and other elements of fair process did enhance feelings of fair treatment and increased acceptance of the law and compliance with the police (Mazerolle et al., 2012).

It is important to remember that what constitutes polite and respectful treatment varies from culture to culture and from one context to another. In addition, because the behaviours involved in this element of procedural fairness are so nuanced, the government officials and agents who are enacting the process should receive adequate training and find ways of conveying respect that fit their own personal styles. There is evidence that training programmes can be successful in raising levels of politeness and respect: a randomised control study of police training in Chicago (Schuck and Rosenbaum, 2011) demonstrated the value of procedural justice training, showing how fairness training can affect the subsequent attitudes and behaviours of officers.

Why do people place so much emphasis on respect and politeness as they decide whether they have been treated fairly or not? As noted earlier, theorists believe that people generally interpret fair treatment as an indication of whether they can co-operate without fear of being excluded or exploited. For this reason, fairness judgements are likely to be based on elements of process and treatment that seem reasonably linked to inclusion and safety. Polite and respectful treatment, like voice, carries the message that one is in fact a valued member of the state. These rather abstract, and seemingly trivial, considerations turn out to have important practical implications, since they tell us something important about what parts of politeness and respect are likely to be most important: elements of behaviour and process that convey inclusiveness and solidarity.

**Explanation**

Providing explanations about the regulatory or administrative processes and about the reasons for decisions enhances procedural justice judgements (Bies and Moag, 1986; Lind et al., 2000). Honest, comprehensible
explanations give the citizen reason to believe that their participation in the process is real, and that they are being treated like someone worthy of receiving the information needed to navigate the process and understand decisions.

Those who design and administer regulations, and who deal with regulations and administrative decisions every day, may forget that most citizens are unfamiliar with the regulatory process. Even well-educated people often have only an abstract understanding of how regulatory hearings work, how a given regulation is to be applied, or how decisions are made and enforced. Not understanding the rules can be extremely frustrating, and more than a little alienating. Lack of explanation invites attributions of bias or arbitrariness, as the citizen or stakeholder tries to understand what has happened and why. Indeed, in a US study of compliance with and litigation against employment termination decisions, employers who were seen as not providing honest explanations for the reason for dismissal were seen as much less fair (and were ten times more likely to be sued) than were employers who provided explanations (Lind et al., 2000).

In practice, the key features of explanations that should be involved are an explanation of how the process will play out, a description of what the decision criteria are, and an account of how the decision maker will go about arriving at their decision. “Road maps” of processes and alternatives are valuable information for citizens, as are statements about the timing of various events and who will speak when. When decisions are made, some explanation of the supporting law and interpretation of the evidence, even if this runs contrary to the citizen’s own views, is needed, since this will make the underlying rule clearer and future decisions more predictable.

The timing and practice of fair processes

The “big three” elements of fair process – voice, respect, and explanation – can and probably should be combined into an overarching fair process in the design and administration of regulations, and there are studies and policy innovations that suggest how exactly this can be done most successfully. First, there is research that shows that in perceived fairness, first impressions are very important. Studies (e.g., Lind, Kray, and Thompson, 2001) suggest that if a person’s first encounter with a process or an authority seems fair, that early experience will colour the interpretation given to later experiences and encounters.

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

Competence and integrity: Foundations of trustworthy regulation

A final consideration lies at the intersection of objective and subjective fairness. A desire to make sure that the people who administer laws and regulations do so with integrity and competence drives a great deal of legal and regulatory process. Of course, citizens are not blind to the possibility of corruption or incompetence, and they factor any evidence of either of these into their perceptions of the fairness of their experiences. (See Tyler, Goff and MacCoun, 2015 for a discussion of how these factors matter in police-citizen interactions.) Evidence of corruption is, of course, a strong barrier to any feeling of fair treatment. In a cross-national study of reactions to the self-serving behaviour of managers in business settings, Janson et al. (2008) found that the belief that a manager was concerned with serving his or her own interests negated any beneficial effect of subsequent fairness-oriented actions on the part of that manager. Janson et al. (2008) refer to the perception of self-serving versus self-sacrificing behaviour as a psychological “heuristic” or shortcut to trusting or distrusting that person.

If early on in an encounter an official or authority seems to be interested in his or her personal gain, people quickly come to distrust that person and it is difficult to change that initial reaction. If on the other hand the official appears at the outset to be willing to make sacrifices for the general good, people’s trust in his or her motivations is almost automatic. In either event, early selfish or selfless behaviour can often overwhelm later fair or unfair actions. Interestingly, fairness judgements can block concern about self-interest if fair treatment is encountered first.
The practical lesson from this line of research is that fairness, integrity, and competence should all be part of the citizen’s impression from the very beginning. One need only imagine an encounter with an official who demonstrates both integrity and competence while at the same offering the citizen voice and consideration, respect, and explanations to see how these two factors can and should be combined with fairness elements to provide a positive experience with government. Similarly, one need only imagine an encounter with an official who seems corrupt, incompetent, or unfair to see how all three factors are needed.

Conclusion

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

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

While policy analyses often assume that a citizen’s acceptance of any given regulation is determined largely by their attitudes or ideology about the legitimacy of the government and whether they benefit personally from the regulation, research shows that feelings of fair or unfair treatment often exert as much influence on citizens’ acceptance of and compliance with regulations. The conventional wisdom is that those who are advantaged by a regulation will accept it while those who are disadvantaged by the regulation will reject it. In study after study, however, citizens’ acceptance of laws,
regulations, and government decisions has been found to be strongly affected by whether the citizen believes that he or she received fair treatment in personal encounters with government. Some citizens will even prefer negative consequences for themselves, such as financial penalties over compliance, if they perceive that they have been treated unfairly (Lunn, 2014).

The impact of fairness judgements extends to general attitudes about government – numerous studies have shown that perceived fairness of treatment in interactions with government agencies enhances trust in government and acceptance of the government’s legitimacy. Thus, regulations seen as fairly administered increase legitimacy and trust in government, which in turn further improves co-operation with regulatory processes.

Three factors have been found to exert especially strong effects on whether citizens feel that they have been treated fairly or unfairly in their encounters with government. The first of these factors is “voice” – the belief that one has had an opportunity to present one’s case and that decision makers have considered one’s views. When voice is denied, both the process and the ultimate decision are likely to be seen as unfair. The second factor is whether the citizen feels they were treated with respect and dignity in the course of an encounter with government. When citizens feel that they have been treated with respect in encounters with regulatory agencies or officials, they tend to see the process as fair; when they feel they have been treated disrespectfully, they tend to see the process as unfair. The third is providing explanations to inform the citizen’s understanding of the process and outcome.

Research and theory in the study of perceived fairness suggest that these factors – and the fairness judgements they foster—have such strong effects because feelings of fair treatment summarise whether the citizen feels included in or excluded from government processes, and this in turn contributes to whether they feel safe responding as co-operative members of the state. This chapter considers existing research on how each of these three factors enhances perceived fairness, with particular attention to how each might be (and has been) implemented in policy contexts.

Trust-building factors (especially respect and explanation) depend not only on formal procedures but also on issues of style and nuances of the behaviour of government agents and officials. To promote perceptions of fair treatment, governments should conduct careful training of officials and ongoing evaluation of how their actions are viewed by citizens and other stakeholders. Changes in process and style can in fact enhance perceptions
of fairness, and the resulting increase in perceived fairness indeed benefits governments and citizens. At the same time, some less successful attempts to enhance perceived fairness in regulatory processes have shown that without careful attention to and monitoring of how regulatory processes are actually enacted, procedural innovations designed to enhance perceived fairness can fail. Monitoring perceived fairness can also provide valuable information for the overall evaluation of the interaction between government and citizens.

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

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

Note

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


4. REGULATIONS, FAIRNESS AND TRUST


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