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Toward a Global Justice

Lessons from Justice and Fairness in Ethnoplural Societies

Willingly or unwillingly the world has become the fabled "global village" (McLuhan, 1989), and this global village is multicultural, multinational and multiethnic. The scale, complexity and impact of this process demand major efforts to coordinate the world system with new kinds of political, economic and legal regimes. Whereas this process is mostly analyzed within the framework of its political economic and cultural consequences, law and the legal system as a functional prerequisite of both national and transnational interaction is only of interest if legal regulations for international business transactions, multinational organizations or large investment projects are concerned (Gessner, 1994; 1995). Of course, there exists a voluminous literature which compares the world's legal systems (Zweigert & Kötz, 1987). Gessner (1995), however, commented that "little can be learned in this respect from comparative law where, after a century of research, nothing is offered to the scientific classification of legal orders in the world other than the concept of legal families, telling us that some legal system are more related to each other than others" (88).

Furthermore, the actors in the literature on translegal interaction are multinational enterprises, states or international organizations. Until recently, individuals or ethnic groups as legal actors are hardly visible except perhaps in transborder claims for divorce, child support and disputes of succession. Mass migration as a further consequence of globalization led to the creation of ethnoplural societies where a dominant majority coexists with one or more subordinate minority group with competing moral conflicts and legal orientations (Bierbrauer, 2000).

This paper explores both the requirements and the potential of legal and non-legal procedures suitable to regulate conflicts among individuals with different cultural backgrounds and legal experiences. Because there is no universal system of law or norms, the paper craws on research conducted in ethnoplural societies, where cultural diversity is already reality (Bierbrauer & Pedersen, 1996).

Cultural diversity poses a new challenge the legitimacy of the legal system and its ability to amicably handle conflict in a multiethnic society, because a key element in political and legal systems is the degree to which members of a society see adequate reasons to voluntarily comply or not. From a social psychological perspective legitimacy rests on the feelings of dignity, respect, trust, neutrality, and positive evaluations that are bestowed to individuals of minority groups in plural societies. People are more likely to voluntarily obey the law if they think the law

is morally right and if they think that legal authorities are legitimate and ought to be obeyed (Tyler, Boeckmann, Smith & Huo, 1997).

If the multi-ethnic societies fail to provide adequate reasons and resources for its minority members to voluntarily identify with a set of superordinate values as discussed later, these societies may move towards becoming a mosaic society composed of citizens with strong identification with their ethnic subgroup (Schlesinger, 1992). The question then is whether democratic institutions can count on legitimacy and maintain support from members who hold to different values.

Two views about conflict behavior

One difficulty to resolve conflicts in an ethnically and culturally diverse society is the absence of consensus about how conflicts should be resolved. In order to comprehend the barriers for conflict resolution we have to understand the way people respond to conflict situations (Klinger & Bierbrauer, 2000).

Basically, there are two general views about people's reactions to conflicts and their settlement: (1) an instrumental motivation that is driven by self-interest and the desire to maximize own resources (Homans, 1961; Lind & Tyler, 1988); (2) in contrast to the instrumental motivation people react to conflict experiences also less egocentric. This motivation, however, is activated only when certain conditions are met. For instance, research on justice by Lind & Tyler (1988) and Tyler (1990) reveals that people are willing to give up this instrumental motivation when they feel that they are treated with fairness. Fair treatment implies recognition of full status whereas unfair treatment implies marginal status.

These two models of human behavior provide contrasting predictions about people's ability to amicably handle their conflicts and reach a satisfactory agreement. If the instrumental model is an accurate portrayal of social motivation, then the outlook for reaching a mutually satisfactory solution is dismal. While there are situations in which people can reach a "win-win"-solution in which both parties get what they want (Fisher, Ury, & Patton, 1991), the more typical outcome in conflicts is that one party will win or get a better, more favorable outcome than the other party. Hence, if individuals are driven by their desire to attain good outcomes for themselves, then it is inevitable that there is no way to amicably settle their conflict.

If on the other hand people are willing to forego their instrumental desires, then the outlook for reaching a mutually favorable outcome is brighter. While not everyone involved in a conflict can win all the time, any social system must provide means and ways for those people who loose in a conflict or did not obtain what they want, can walk away from the conflict satisfied. In other words, social systems must provide procedures which buffer the negative consequences of unfavorable outcomes. As demonstrated by Lind and Tyler (1988) and Tyler (1990), a potent buffer which compensates for disappointment is the perception of fair treatment by the involved parties.

Dimensions of fair procedures

Tyler and Lind (1988) argue that one's relationships with authorities and groups are of great concern when people generate procedural fairness judgments because the procedural justice judgments will be used to evaluate the relationships. Authorities, the authors argue, are often

seen as symbolic of the entire group or society and thus the perception of one's relationships to an authority is generally an important reflection of one's relationship to the entire group. The following dimensions are important when people evaluate the fairness of a procedure: (1) trust in the benevolence of the authority's motives; (2) feelings that the authority treated the person with dignity and respect; (3) the belief that the authority is neutral and bases his or her decisions on all facts.

That the perceptions of fair and unfair treatment shape people's reactions to their interactions with others has been demonstrated many times over a variety of social contexts (Lind & Tyler, 1988; Tyler & Lind, 1992 for a review of the relevant literature). In legal and political settings, evaluations of treatment are linked to general evaluations of authorities and legitimacy of the social system, willingness to accept the outcomes of court decisions and intention to comply with the law.

Differences and consensus

The results of studies conducted on legal cultures where lay people with different cultural backgrounds were asked about their subjective notions of law, the legal system and the way they resolved disagreements suggest that individuals from different cultures differ in the way they perceive their legal system, e.g. the legal authorities and sources of legitimacy (Bierbrauer, 1994).

However, the viability of an ethnoplural society depends on whether individuals from a diverse range of cultural backgrounds agree on a common standard for conflict regulation. Hence, it is appropriate to study and find procedures how different cultural groups within a country or state respond to conflicts. For instance, Tyler and his colleagues (Lind, Huo & Tyler, 1994) asked ethnically diverse respondents in the United States several questions about their experience with real conflicts and how they were handled. In particular they were asked to rate (1) how favorable the outcome was to them; (2) how fair the process was, and (3) the extent to which the conflict between the parties involved was reduced. The results show that the fairness of the process was the most important predictor of overall satisfaction with the experience. This factor was more important than either the nature of the outcome or conflict reduction.

Superordinate identity

The problem for an ethnically diverse society, however, is that the most difficult and intractable disputes are exactly those which occur between members of different social groups who express strong differences in values and interests (Bierbrauer, 2000). Intractable conflicts between people of different ethnic groups or nationalities are those which are driven by a desire to "win" and to pursue self-interest than by concerns about fairness and one's relationship to valued norms.

One way to control or temper self-interest motives was suggested by Huo, Smith, Tyler and Lind (1996) who argues that conflicts between members of different ethnic groups can be resolved if a common group membership is made salient, such that members of different cultural groups come to view themselves as part of the larger society, e.g. Germany rather than as outgroup members. Therefore, if members feel that they share a common group membership at a superordinate level, then their evaluations of the conflict experience will be dominated by concerns about fair process rather than self-interest. Hence, encouraging identification with a

superordinate group or goal may be a useful strategy to reframe interethnic conflicts as disputes that occur among members of the same superordinate social unit.

A study by Huo, Smith, Tyler and Lind (1996) involving participants of different ethnic groups showed that, if people identify with superordinate groups, they care more about fair treatment and the symbolic information it conveys than about pursuing material self-interests. Those, however, who identified with their ethnic group but disidentified with the superordinate group directed their focus on substantive outcomes.

From ethnically diverse societies to a global society

So far we have relied on studies involving participants of various ethnic backgrounds within the context of the United States. As previously indicated, studies across different cultures and nations demonstrate a variety of opinions as to what legal culture is like (Bierbrauer, 1994). A study designed to test the degree to which procedural justice matters across members of different countries was conducted by Bierbrauer, Leung and Lind (unpublished). Participants from Germany, Hong Kong and the United States were asked about their procedural preferences to handle a dispute, for instance, whether they prefer to handle a dispute by negotiation or avoiding or whether they prefer a third party to handle the conflict. Overall, the results show a remarkable agreement with regard to the procedures preferred in all three countries. If third party procedures (mediation and arbitration) were considered separately, procedural fairness was by far the most important factor for all participants. Whether or not the outcome will be positive or negative was of only minor importance to them. Thus, research across cultures also points toward the importance of procedural fairness as the common denominator when justice issues are at stake. In a world with a multitude of cultures embedded in different legal systems perhaps procedural fairness may be the key to handle conflicts in a global context.

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