PERCEPTIONS OF FAIRNESS IN THE JUSTICE SYSTEM: A CROSS-CULTURAL COMPARISON

REBECCA A. ANDERSON Boston College, MA, USA AMY L. OTTO Albion College, MI, USA

Research comparing the adversarial and inquisitorial justice systems has consisted primarily of American participants reading descriptions of each system in their "pure" form, rather than descriptions that allow for the flexibility with which these systems are actually employed. In this study, participants from the Netherlands and the United States read short, realistic descriptions of each system and answered questions about the fairness of both procedures. Results indicated that while the adversarial system was rated significantly higher on the likelihood that all evidence will be presented, and the likelihood that both the victim and the defendant will get an opportunity to voice their cases, people showed a clear preference for their own system. This bias toward one justice system over another may be due to the cultural values reflected in each system.

The ability of any legal system to perform effectively rests on the public's belief that it employs fair procedures that result in just outcomes. Discerning what components people deem necessary to achieve fairness is vital for improving justice systems throughout the world. With the growth of international law it has become increasingly important to look beyond one's own system and

Rebecca A. Anderson, Department of Psychology, Boston College, MA, USA; Amy L. Otto, Psychology Department, Albion College, Albion, MI, USA. This research was supported in part by a grant for summer research from the Foundation for Undergraduate Research, Scholarship, and Creative Activity (FURSCA) at Albion College and from the Kirsten D. Metalonis Summer Research Fellowship, Albion College.

Appreciation is due to reviewers including: Ming Singer, PhD, Department of Psychology, University of Canterbury, Christchurch 1, New Zealand. Email: <ming.singer@canterbury.ac.nz>Sutham Cheurprakobkit, Associate Professor of Criminal Justice, Department of Sociology, Geography and Anthropology, Kennesaw State University, 1000 Chastain Road, Kennesaw, GA 30144, USA. Email: <SCheupr@kennesaw.edu>.

Please address correspondence and reprint requests to: Rebecca A. Anderson, Department of Psychology, McGuinn Hall, Boston College, Chestnut Hill, MA 02467, USA.

Phone: (617) 308-2611; Fax: (617) 552-0523; Email: <anderst@bc.edu> or to Amy L. Otto, Psychology Department, Albion College, Albion, MI 49224, USA.

Phone: (517) 629-0395; Fax (517) 629-0407; Email: <aotto@albion.edu>

examine the strengths and weaknesses of justice systems in other countries. Although different procedures are used around the world, two of the most commonly used legal systems are the adversarial and the inquisitorial. The adversarial system is used in countries such as the United States, Great Britain, Australia, and Canada. In this procedure, the judge is a neutral director of proceedings, lawyers are responsible for developing their evidence and arguing the case, and decisions are made by either a judge or a jury. In the inquisitorial system, on the other hand, the court compiles evidence, the judge plays an active role in searching for arguments, lawyers play a more restricted role, and there is no jury. This system is used in many European countries, including the Netherlands, Germany, and France.

Early research on procedural justice compared adversarial and inquisitorial procedures, and generally found that the adversarial system is strongly preferred to the inquisitorial (e.g., Houlden, LaTour, Walker, & Thibaut, 1978; LaTour, Houlden, Walker, & Thibaut, 1976; Walker, LaTour, Lind, & Thibaut, 1974). It has been hypothesized that this preference is due to the greater control afforded participants in the adversarial system. However, the majority of studies examining these two systems were limited because they used only American participants. There has been very little recent research on this topic, creating a need for additional studies that compare participants from different cultures.

In addition, Sheppard (1985) has suggested that the descriptions of the procedures used in past research were presented in their "pure" forms, instead of how they are actually employed in each system. Previous research employed mock trials or descriptions that explicitly emphasized whether or not the judge has control over the presentation of evidence and the decision. These studies generally portrayed the inquisitorial system as not providing an opportunity for disputants to voice their cases, while in reality, disputants are allowed to present their case to the judge or judges. The present study used less rigid, and therefore, more realistic descriptions of the two systems and participants from two different countries to evaluate perceptions of the fairness of adversarial and inquisitorial procedures.

METHOD

PARTICIPANTS

The participants for this study were 120 English-speaking individuals (70 males and 50 females) between the ages of 17 and 63 (mean = 27.8). Sixty participants were from Amsterdam, Netherlands, and 60 were from Chicago, Illinois. None of the participants was compensated. Data were collected in May and June, 2001.

MATERIALS AND PROCEDURE

Short descriptions of the procedures used in the adversarial and inquisitorial systems were created. Information included the role of the judge, the use of expert witnesses, and who gives the verdict and the sentence. The adversarial description stated that "Court cases are presented in front of a jury of your peers. Defense and prosecuting attorneys are responsible for arguing the case and examining witnesses, while judges are objective directors of the proceedings. If applicable, each side can appoint their own expert witnesses. The jury decides the verdict, and the judge gives the sentence for the case." In contrast, the inquisitorial description stated that "Court cases are presented in front of a single judge or a professional judge and two lay judges depending on the severity of the case. The role of the judge is to actively search for arguments for and against the accused. Judges can use their discretion to protect the less experienced or socially weaker party. The judge examines witnesses and the court appoints impartial expert witnesses, if necessary. The judge decides the verdict and gives the sentence for the case."

Following each description was a short questionnaire designed to assess participants' perceptions of the fairness of each system. For each system, participants rated the following questions on seven-point Likert-type scales (ranging from not at all likely/fair to extremely likely/fair): (1) How likely is it that this procedure would result in a bad decision?, (2) How likely is it that all the important information and evidence will be presented?, (3) How likely is it that the victim will get a chance to voice his/her case?, (4) How likely is it that the accused party will get a chance to voice his/her case?, (5) How fair is this method of resolving disputes? The order of the descriptions was randomized to protect against order effects. Participants were approached in public places and university buildings and asked to complete the questionnaire. They were not told beforehand what systems the descriptions represented.

RESULTS

A 2 (country of origin) x 2 (procedure type) MANOVA was used to analyze the data. A significant multivariate effect was found for country $[F\ (5,\ 111)=2.74,\ p<.05]$. Univariate tests indicated a significant effect for country of origin on the likelihood that all evidence would be presented $[F\ (1,\ 115)=5.16,\ p<.05]$. Marginally significant univariate effects were also found for country on the likelihood that the victim $[F\ (1,\ 115)=2.79,\ p=.098]$ and accused $[F\ (1,\ 115)=3.33,\ p=.071]$ would have the opportunity to voice his/her case (see Table 1 for means). For each of these variables, the Dutch gave more positive ratings of the justice systems than Americans did.

TABLE 1

MEAN RATINGS OF PARTICIPANTS FROM THE NETHERLANDS AND THE UNITED STATES

	United States	Netherlands	
Bad Decision	3.92	3.83	
Important Information**	4.31	4.78	
Victim Voice*	4.59	4.93	
Defendant Voice*	4.60	4.99	
Fairness	4.41	4.21	

Note: **p < .05, *p < .10.

A significant multivariate effect was also found for procedure $[F\ (5,\ 111)=6.96,\ p<.001]$. Significant univariate effects for procedure type were found on the likelihood that the victim $[F\ (1,\ 115)=19.30,\ p<.001]$, and defendant $[F\ (1,\ 115)=4.77,\ p<.05]$, would have a chance to voice his/her case. There was also a significant univariate effect for procedure type on ratings of the likelihood that evidence would be presented $[F\ (1,\ 115)=5.99,\ p<.05]$ (see Table 2 for means). For each of these, the adversarial system was rated higher than the inquisitorial. Although not significant, the adversarial system was also rated as being more likely to result in a bad decision $[F\ (1,\ 115)=2.49,\ p=.12]$.

A significant multivariate effect was found for the interaction between country and procedure $[F\ (5,\ 111)=13.81,\ p<.001]$. Follow-up univariate tests revealed a significant interaction between country and procedure type on ratings

TABLE 2

MEAN RATINGS OF THE ADVERSARIAL AND INQUISITORIAL JUSTICE SYSTEMS

	Adversarial	Inquisitorial
Bad Decision	4.04	3.71
Important Information*	4.75	4,33
Victim Voice**	5.12	4.39
Defendant Voice*	4.98	4.62
Fairness	4.34	4.27

Note: **p < .001, *p < .05.

of fairness [F(1, 115) = 43.74, p < .001], with both Dutch and American participants preferring their own system (see Figure 1). Similarly, the interaction between country and procedure on likelihood of making a bad decision was significant [F(1, 115) = 19.97, p < .001]. Participants from both countries believed that their system was less likely to result in a bad decision, but the Dutch participants saw a bigger difference between the two systems than the Americans did

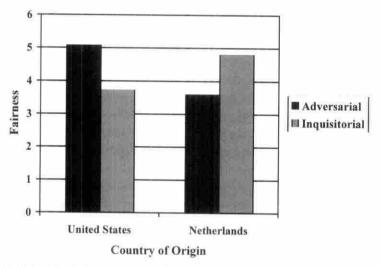


Figure 1: Interaction between country and procedure type on fairness.

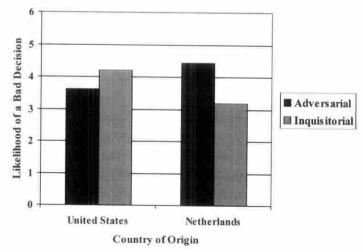


Figure 2: Interaction between country and procedure type on likelihood of a bad decision.

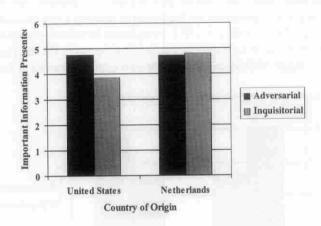


Figure 3: Interaction between country and procedure type on presentation of evidence.

(see Figure 2). In addition, there was a significant interaction between country and procedure type on presentation of evidence [F(1, 115) = 8.10, p < .01]. As can be seen in Figure 3, Americans rate their own system higher, while the Dutch believe that all important evidence will be presented under either system.

DISCUSSION

While previous research (Houlden, et al., 1978; LaTour, et al., 1976; Walker, et al., 1974) has suggested that people prefer the adversarial system to the inquisitorial, the results of the present study show that while the Dutch have more positive views of the justice systems in general, there is a clear preference for one's own system. This bias may indicate that people simply prefer what is familiar (Moreland & Zajonc, 1982). There is, however, an alternative explanation for the results. Chase (1997) argues that legal systems are products of particular cultures and, therefore, reflect and maintain those cultures. Gibson and Caldeira (1996) provided support for this assessment through their study of legal cultures in Western Europe. They specifically found that significant differences do exist between countries on legal attitudes such as support for abiding by laws and perceptions of how neutral the law is. Following this reasoning, it is natural for people to prefer their own system because it more closely reflects their beliefs and values than do other systems. This result may not have been found in earlier studies because these studies rarely used a cross-cultural sample, and as Sheppard (1985) pointed out, most previous research did not accurately describe either system as it is actually employed.

These findings are important in challenging the widely held assumption in the justice literature that there are universal preferences for procedures; and, specifically, that there is a strong preference for the adversarial system. This work also underscores the utility of conducting cross-cultural research on justice systems. The recent formation and development of the International Criminal Court makes cross-cultural justice research all the more timely and important. Furthermore, future justice research should examine legal culture. Procedural justice research has attempted to identify the elements that people believe are most crucial to attaining fairness, but the little cross-cultural work that has been done in this area has failed to take into account the possible influence of legal culture on participants' preferences. This influence must be considered if researchers are to ascertain the objective criteria that are vital to achieving fairness. By discovering the characteristics of fairness that are universal and examining how they are presented in each system, improvements can be made to all legal systems.

REFERENCES

- Chase, O. G. (1997). Legal processes and national culture. Cardozo Journal of International and Comparative Law, 5, 1-24.
- Gibson, J. L., & Caldeira, G. A. (1996). The legal cultures of Europe. Law and Society Review, 30, 55-85.
- Houlden, P., LaTour, S., Walker, L., & Thibaut, J. (1978). Preference for modes of dispute resolution as a function of process and decision control. *Journal of Experimental Social Psychology*, 14, 13-30.
- LaTour, S., Houlden, P., Walker, L., & Thibaut, J. (1976). Some determinants of preference for modes of conflict resolution. *Journal of Conflict Resolution*, 20, 319-356.
- Moreland, R. L., & Zajonc, R. B. (1982). Exposure effects in person perception: Familiarity, similarity, and attraction. *Journal of Experimental Social Psychology*, 18, 395-415.
- Sheppard, B. H. (1985). Justice is no simple matter: Case for elaborating our model of procedural fairness. Journal of Personality and Social Psychology, 49, 953-962.
- Walker, L., LaTour, S., Lind, E. A., & Thibaut, J. (1974). Reactions of participants and observers to modes of adjudication. *Journal of Applied Social Psychology*, 4, 295-310.

Copyright © 2003 EBSCO Publishing