The changing nature of law and justice

Convened by Associate Professor Diane Sivasubramaniam, this panel explored how new technologies affect rights and responsibilities, and how we make laws and achieve justice.

This is a brief summary of the psychological research on justice, to preface some of the ideas that our Justice panel will draw on in their discussion. It is important to clarify that the psychological study of justice is essentially about people's perceptions of justice: how ordinary people decide whether something is just, or fair.

Early focus: Distributive justice

Early scholarship in this field focused on *distributive justice*—how people make decisions about whether resources are distributed fairly. This early work established that there are particular allocation rules that we see as just, and different rules are seen as more just in different situations.

One allocation rule is equality: everyone gets the same.

Another is equity: everyone gets what they deserve. This is probably the most pervasive allocation rule and one that applies particularly in work situations—if you contribute more work, you expect a larger reward.

Another major allocation rule is need. This tends to be seen as acceptable in some situations, mostly those involving very close social relationships like family relationships.

Early justice scholars also established that people perceive a strong sense of injustice when these allocation rules were violated. Consider, for example, the sense of relative deprivation. If we see someone the same task as us, but getting a better reward, that violates that equity principle, creating a sense of injustice, anger, and dissatisfaction.

It is important to note that this injustice response to relative deprivation is a very primal, visceral response—it's so basic in us that we see it across species.

Franz de Waal demonstrated this principle with Capuchin monkeys. When a monkey performs a task and is rewarded with, for example, a piece of cucumber, he appears satisfied. But when a second monkey, in view of the first monkey, performs the same task and receives a better reward, such as a grape, which Capuchin monkeys prefer over cucumber, the first monkey becomes very angry very quickly, and is no longer willing to accept the previous, non-preferred reward for his work. The reward that was previously acceptable is acceptable no longer, because another is receiving a better reward for equivalent work.

Even in monkeys, the injustice response to relative deprivation is instant, basic, and angry.

Current focus: Procedural justice

In later work on justice reasoning, beginning around the 1970s, scholars began to focus more on procedural justice owing to the growing recognition that justice judgments were also shaped by the processes used to decide how to allocate resources. The study of *procedural justice* now dominates the research field.

A vast body of research affirms that certain procedural features, such as respectful treatment or politeness, affect our judgments about whether processes are fair or just.

There is also a vast literature investigating why respectful treatment affects procedural fairness judgments.

Consider, for example, Lind and Tyler's group value model—the dominant model in this area. This model contends that people are highly motivated to figure out where they stand in social groups, as we want to know that we are highly valued by the social groups that we value The quality of treatment that we receive from group members, and particularly from authority figures in the group, conveys important symbolic or relational information.

For example, if, in the context of work, my manager is very respectful to me, this is a sign to me that I am highly valued by my work colleagues. Research shows that when procedures make us feel this way—when they make us feel valued and respected—we judge those procedures to be fairer. There is a lot of evidence in support of the group value model.

Why is procedural justice so important?

The sense of procedural justice has variety of important consequences. To illustrate, when people feel they have been treated fairly—that is, when they have received procedural justice—they: are more satisfied with the procedure; are more satisfied with the outcomes they received from that procedure; and believe those outcomes are more just.

Procedural justice also has very important implications for people's relationships with the authorities who conducted the procedure. For example, when people feel they were treated fairly by authorities, they: are more willing to comply with the instructions of those authorities in future; are more willing to co-operate with those authorities in future; and perceive those authorities to be more legitimate.

If you apply this to the criminal justice system, for example: when police treat citizens respectfully in an interaction and make them feel that they have received procedural justice, this has significant implications for people's willingness to comply with the law and cooperate with legal authorities in future. So legal authorities, and authorities in various social institutions, are interested in procedural justice research.

A crucial question is: when we have experienced procedural justice, *why* we are willing to comply with authorities and cooperate with them in future, and see them as more legitimate?

One scholar, E. Allan Lind, has argued that we face the "fundamental social dilemma," which arises from the fact that being part of a social group, such as being a citizen in a society, provides us with benefits but, at the same time, it puts us at risk. We make ourselves subject to the authorities in that society, and therefore we are vulnerable to those authorities—they can impose severe negative outcomes on us.

This vulnerability means that we have to be vigilant about exploitation by those authorities. Lind argues that essentially, procedural justice is a heuristic—a mental short cut—that we use to guide our decisions about whether it is safe to comply with the instructions of an authority figure. If the authorities behaving fairly, then we surmise that it is safe to comply, to co-operate, and to continue to support those authorities.

The key point here is that when people make a *trust* judgment, they are essentially deciding whether to trust authorities.

This notion of trust is very closely entwined in the psychology of justice. Essentially, it is important to us to receive procedural justice from authorities, and from social institutions, because it addresses our fundamental social dilemma. Procedural justice signals to us that we can trust those authorities and those social institutions.

What is "justice"?

A vast body of procedural justice research says that we judge procedures to be just when the target of the procedure is treated respectfully, but this research has been critiqued. One of the most significant critiques is articulated by Melvin Lerner, who argues that what most procedural justice researchers are studying right now is not really justice.

Although the concept of 'procedural justice', has several important consequences, at a conceptual level, thus concept is not the concept of 'justice' *per se*.

Lerner argues that much of the research demonstrating support for the group value model is done in labs, using sterile scenarios that don't engage research participants emotionally. Under these circumstances, Lerner contends that the judgements that people are making about whether something is 'just' are calculated, deliberative, emotionless, and cold.

Instead, Lerner argues that 'justice' is a visceral response to a stimulus—it's automatic, intuitive, instantaneous, and full of emotion, specifically anger.

In essence, the argument here is that 'justice' research that does not engage research participants in the emotion of an event or a stimulus, is not really studying 'justice'. Rather, these studies are simply investigating whether people *like* a procedure, not whether they think it is *just.*

Lerner argues that, when we neglect the emotional component of justice or injustice, we are missing an important piece of the puzzle: the missing piece is 'deservingness', also known as the equity principle.

If we return to the early literature examining distributive justice: when people were allocating a resource based on an equity principle, the important question was whether people got what they deserved. Lerner says the deservingness principle still applies to procedural justice.

So, Lerner argues that we don't always consider it just when we see someone being treated respectfully. Rather, we tend to want to see people being treated *as we think they deserve*.

There are two key points I would like to make about Lerner's notion of justice.

The first is that it contrasts with the group value model. The group value model posits that respectful procedures are perceived as just, but Lerner disagrees, instead arguing that respectful procedures are not always perceived as just—respectful procedures are just to the extent that we think the target of that procedure deserves respectful treatment. If we think the target does not deserve respectful treatment, then we will tolerate that target being treated disrespectfully.

The second point is that Lerner's notion of justice—the deeply human, visceral, deservingness-based sense of justice—contrasts significantly with the legal notion of justice. In the law, "justice" is deliberative, rational, and is intended to be passionless. Due process is a cornerstone of the legal system; an entitlement that everyone receives no matter their actions. Thus, the legal ideal of justice is distinct from the intuitive justice judgement that humans make.

What Lerner really identifies, and this is a key point, is that there a significant discrepancy between legal notions of justice and the lay instinct of justice. A key task, then, of the legal system becomes prompting humans to temper any knee-jerk justice response with a layer of deliberative, rational reasoning.

The justice motive and belief in a just world

More broadly, Lerner also talks about a *justice motive*, which means that we have a fundamental need, as humans, to see the world as a just place.

A good deal of research evidence has been offered in support of the justice motive—and particularly, in people's *beliefs in a just world*. The belief in a just world concept refers to the fact that in order to function effectively in the world, we must believe that the world is a just place—if we are good people, if we follow the rules and work hard, we will get the good things we deserve. This belief in a just world is also what makes us interested in the fates of other people: if you see someone experiencing injustice, that presents a threat to your belief that the world is a just place.

So, when we see injustice—which is a threat to our belief that the world is a just place—we are motivated to restore justice; that is, to restore our belief in a just world.

There are various ways we can engage in justice-restoring behaviour. For instance, we might compensate an innocent victim, or punish the person responsible for the injustice.

However, we are not always able to engage in justice-restoring actions, for any number of reasons. The injustice may be too significant, or too far away, or we lack the means to intervene. In this circumstance, people do not simply abandon their need to believe in a just world.

Instead, people go through a fascinating psychological process—they make psychological adjustments in how they think about the unjust events, in order to sustain their belief in a just world. One very problematic way in which people do this is to blame the victim; that is, people, implicitly and unconsciously, convince themselves that a victim or victims are somehow responsible for their own suffering and so they deserve their fate.

This is a self-protective mechanism—if we can blame the victim for their suffering, then we can remove the threat to our belief that the world is a just place, and remove the threat to order and goodness in our own lives. Victim blaming is a common response to injustice.

Justice research helps us to understand why that is the case, in a world where we are exposed to so much suffering that we cannot alleviate.

Our panel

This discussion will be chaired by Lynne Haultain. Lynne is currently the Executive Director of the Victoria Law Foundation. Prior to this, Lynne was the presenter of the Law Report on ABC Radio National.

Our panellists are Dr Ryan Young, Director of the National Security College Futures Hub at the Australian National University, Nicole Batch is Protection Manager in the Migration Support Programs of Australian Red Cross, and Bob Bolia, Research Leader, Aerospace Systems Effectiveness and the Lead for the Defence Science and Technology Strategic Research Initiative on Trusted Autonomous Systems.

Please join me in welcoming our panel.

Society 4.0

The Society 4.0 program examines the human, social and cultural implications of emerging technologies like artificial intelligence, biotechnology and autonomous systems.

Society 4.0 symposium: Trust in an age of thinking machines

In the midst of the growing power of emerging and converging technologies, such as genetic manipulation, robotics, and artificial intelligence, our notions of self, society and what it means to be human are changing. In this symposium, we explore the development, maintenance, loss and restoration of trust in an age of thinking machines.

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