Social Justice Research (2024) 37:76–99
https://doi.org/10.1007/s11211-023-00428-4

Procedural Justice and the Design of Administrative Dispute Resolution Procedures

Marc Wever[1] · **Jan Fekke Ybema**[2]

Accepted: 2 October 2023 / Published online: 26 October 2023

Abstract

Are certain characteristics of dispute resolution procedures associated with higher levels of procedural justice? We address this question through a quantitative analysis of real-world experiences of 194 professional legal representatives with the objection procedures of 81 Dutch administrative authorities. In our analysis, two general procedural characteristics are taken into account: the involvement of an independent third party and the extent to which the procedure is focused on the conciliation of competing interests. The involvement of an independent third party was not associated with higher levels of procedural justice. Procedures that were perceived to be more focused on the conciliation of competing interests were evaluated as more procedurally just, even more so in disputes where the administrative authority was perceived to have a higher degree of discretion and in disputes that ended in a negative result for the litigant.

Keywords Procedural justice · Administrative disputes · Discretion · Lawyers

Introduction

In the Netherlands, procedural justice has gained a great deal of attention in recent years, in particular in the areas of public law and public administration (Doornbos, 2017). The theory has fundamentally informed thoughts on how legal and administrative processes should function. The importance attached to procedural justice shows a strong belief that a person's experience of the legal system is an important metric by which to judge the system, and by (re)designing legal and decision-making procedures a certain way, the extent to which users experience these procedures as fair can be increased (Hagan & Kim, 2017).

✉ Marc Wever
marc.wever@rug.nl

[1] University of Groningen, Oude Kijk in Het Jatstraat 26, 9712 EK Groningen, The Netherlands

[2] University of Utrecht, Heidelberglaan 1, 3584 CS Utrecht, The Netherlands

Of course, designing legal procedures to cater to the needs and wants of users is not a straightforward affair. For example, because different types of users might have different wishes, or even different views on what constitutes a fair procedure. In addition, many different types of dispute resolution mechanisms exist: Some procedures involve adjudication, and others are more consensual; some procedures are adversarial in nature, and others are inquisitorial (Thibaut & Walker, 1978); some include an independent third party, and others do not (Hollander-Blumoff & Tyler, 2008). Another complicating factor is that, as the literature shows, procedural preferences are contingent on many factors such as the nature of the dispute, characteristics of the person involved, or their role in the conflict (Shestowsky, 2004). This potentially means that some dispute resolution mechanisms might be considered fair in some cases and/or to some people, but unfair in other cases and/or to other people. However, despite the fact that what it means for a procedure to be fair might vary from situation to situation, procedural justice judgments are always one of the most important criteria for choosing a procedure (Lind et al., 1994).

In this paper we examine the link between two procedural characteristics and procedural justice evaluations of lawyers in the context of administrative disputes. Our focus is on two important characteristics shared by many different dispute resolution procedures. The first procedural aspect we examine is the involvement of an independent third party (as opposed to two-party dispute resolution processes). Secondly, we consider the extent to which the procedure is conciliatory, by which we mean that the aim is to attempt to find a solution to the dispute that both parties can agree with. As procedural preferences are contingent on, among other factors, the nature of the issue at hand we also take this aspect into consideration. In particular, our analysis involves an important feature of modern legal systems: the extent to which to the challenged decisions involve discretion. Discretion, in essence, offers an authority the opportunity to choose between more than one possible course of action based on his/her subjective preferences. We examine if the level of discretion functions as a moderator of the link between the two procedural characteristics and procedural fairness.

We focus on the experiences of professional legal representatives involved in the Dutch administrative objection procedure. For understandable reasons, researchers have been more concerned with the effects of litigants' perceptions of procedural justice than those of the far smaller group of attorneys involved in dispute resolution (Hollander-Blumoff, 2011; Lind et al., 1990a, 1990b). However, the experiences of "repeat players" could yield interesting insights into the dynamics of procedural justice and generate new information on what factors affect perceived procedural fairness (Grootelaar, 2018). Moreover, procedural justice research in the context of administrative decision-making and administrative dispute resolution is relatively rare despite the fact that the volume of administrative adjudications in most countries vastly outnumbers the cases heard in the regular and criminal courts (Asimow, 2015). Third, the bulk of procedural justice research in the context of dispute resolution concentrates on court proceedings and is primarily focused on the effects of perceived procedural justice (Ansems et al., 2020), whereas we are primarily concerned with factors that influence the procedural justice evaluations of lawyers.

The Dutch Administrative Objection Procedure

Each year over 2.5 million objections are lodged against decisions of administrative bodies, making it the most frequently used formal dispute resolution procedure in the Netherlands (Ter Voert & Hoekstra, 2019). Since 1994, objecting is the compulsory first step in Dutch the administrative appeals process. Before an interested party has the right to appeal against an administrative decision to an administrative court, they need to have lodged an objection. This obligates the administrative body that made the decision to offer objectors an opportunity to state their case during an oral hearing and to reconsider its initial decision in full. If the administrative authority wholly or partially repeals the initial decision, the decision upon the objection replaces the repealed one. While it is not mandatory, a substantial portion of objectors is represented by a professional legal representative (Ter Voert & Hoekstra, 2019).

What makes the Dutch objection procedure particularly interesting to examine the effects of the design of a procedure on procedural justice evaluations, is that administrative bodies are allowed to organize their objection procedure according to their own preferences. Therefore, the procedure's characteristics objectors (and their attorneys) encounter differ according to choices made by the public authority.

A Focus the on the Conciliation of Competing Interests

The first objection procedure characteristic we explore concerns the extent to which the goal of the dispute resolution procedure goes beyond accurately determining the legal rights and obligations of the parties involved in the dispute (Daicoff 2003). The primary focus on the legality of decisions can be contrasted with a more conciliatory approach, where the focus is on reaching a voluntary agreement between parties through the conciliation of competing interests. The ultimate goal of such procedures is to solve the conflict behind the legal dispute and underlying problems in order to reach long-term effects (Boone & Langbroek, 2018; Nonet, 1969).

The Dutch objection procedure was designed to be accessible, flexible and focused on problem solving. Despite these intentions, administrative objection proceedings in practice more often than not closely resembled the traditional procedure of the Dutch administrative courts: an adversarial, primarily impersonal and written process, where the focus was the correct application of the law to the facts, with very little attention given to problem-solving or informal conflict resolution.

Since 2008 various initiatives have been adopted to counter this trend. The most influential being the so-called Informal Pro-active Approach Model (IPAM) project initiated by the Ministry of the Interior and Kingdom Relations. This "informal approach" basically entails a more conciliatory alternative to the formal objection procedure of the General Administrative Law Act (GALA). The proposed method is straightforward: Upon receiving an objection against a government decision, a public servant ensures quick and direct personal contact with the citizen and/or his lawyer, by telephone call and/or informal meeting. Rather than merely reviewing the

case based on the merits of the objection, the focus is on de-escalation and conflict resolution. The goal of the informal approach is to resolve the underlying dispute to the satisfaction of the administrative authority, the objector and other interested parties.

The Involvement of an Independent Third Party

The Dutch objection procedure differs from most others dispute resolution procedures, in that dispute resolution procedures usually either do or do not involve an independent third party in the process. An interesting feature of the Dutch objection procedure is that the decision to include an independent third party to conduct the review is left up to the administrative authority. The GALA offers administrative authorities the option to appoint an independent advisory committee to prepare the decision upon the objection (Wever, 2018). If an independent advisory committee is appointed, the hearing—where both the objector and (representatives of) the administrative authority are present as parties to the dispute—is conducted by the committee or the chairman (art 7:13 GALA).

Characteristics of Administrative Disputes: Discretion

As we briefly noted in our introduction, procedural preferences are contingent on many different factors. One potentially important factor to consider is the degree of discretion involved in the contested decision. Discretion is an important feature of modern legal systems and entails the extent to which officials, whether they be judicial or administrative, make decisions in the absence of previously fixed, relatively clear and binding legal standards (Craig, 2018; Galligan, 1996). Administrative discretion involves a right to *choose* between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred (Grey, 1979).

To put it into terms procedural justice scholars are familiar with: Discretion provides an administrative authority with a high degree of "decision" control (Thibaut & Walker, 1975). Vice versa, if an administrative official or body is bound by fixed, clear and binding legal standards that prescribe a certain decision under certain circumstances, it can be argued that the administrative body lacks *real* decision control. After all, it is the applicable law that—given the facts of the case—dictates the substantive decision to be made.

Discretion is relevant in the context of administrative dispute resolution, because it essentially affords the administrative body the freedom to make decisions based on its own policy preferences. On the one hand, decisions involving a high degree of discretion could be "essentially unreviewable and have a significant potential for being arbitrary and capricious" (Morar & Cooper, 1983). On the other hand, in disputes that involve the use of discretion, there is the opportunity for compromise. In that case, prior studies have found negotiation-oriented procedures were better received than other types (Heuer and Penrod, 1986).

As our focus is on the procedural justice evaluations of professional legal representatives, the first matter we need to address is what procedural justice means to lawyers and why would it matter to them? Compared to laypersons, legal professionals have more (formal) training and experience in law. And, unlike laypersons they represent, they have no (or at least far less) personal stake in the outcome.

Procedural Justice and Legal Professionals

While procedural justice or fairness has been a scholarly interest since the mid-1970s (Folger, 1977; Leventhal, 1980; Thibaut & Walker, 1975), there is not an abundance of literature available concerning the question what constitutes procedural justice for legal professionals, why procedural justice would matter to them, why their evaluations of procedural justice would be of interest to others (scholars and policy makers).

What Does Procedural Justice Mean to Lawyers?

There is some literature that indicates that professional and laypersons' procedural justice evaluations differ in degree rather than in kind. For example, a study by Lind et al. (1990b) demonstrated that attorneys and litigants appear to use the same standards to evaluate the fairness of procedures. MacCoun et al. (1988) found that although attorneys tended to perceive greater process fairness than their clients, attorneys and their clients emphasized similar procedural attributes in their fairness judgments, with both giving greater weight to ratings of the quality of treatment than to the actual monetary outcome of the case. Stalans & Lind (1997) found that both taxpayers and their professional representatives were influenced by similar aspects of the procedural fairness of the tax audit process, although the representatives were more sensitive to outcome characteristics. While the literature discussed here does not rule out the possibility that litigants and lawyers in our context have very different conceptions of what a fair procedure is, there is little indication that the concept of procedural justice in general has a very different meaning to laypersons and their professional representatives.

Why Would Procedural Justice Matters to Lawyers?

Even if laypersons and professionals' standards of procedural justice are similar, this does not answer the question of why procedural justice would matter to professionals. This question is particularly relevant, as lawyers are not the object of the procedure, nor do they for instance have to live with the consequences of negative outcomes. The literature describes several reasons for the importance of procedural justice for "regular" people involved in legal proceedings. However, there is not a lot of theory explaining if (and why) procedural justice would matter to people involved in legal proceedings who are not the direct *object* of the procedure.

As to why procedural justice matters to ordinary people, several models exist. The instrumental model suggests people expect fair procedures to give the best chance of reaching a fair and—equally important—favorable outcome in the long run (Thibaut & Walker, 1978). Sense-making models propose that people use information about the fairness of procedures (which is readily available to them) to reduce uncertainty about the fairness of outcomes, because the information needed to judge the fairness of outcomes is often not available to them (Van den Bos et al., 1997). In relational models, fair procedures communicate a positive message about how the individual is perceived by the group as represented by the authority in question (Lind & Tyler, 1988). In other words, people use procedural cues to evaluate the nature of their relationship with the group they belong to (for example, society at large or an organization they belong to).

So which, if any, of these three models is of the most likely applicable to lawyers? As far as we are aware, there is no literature available that addresses this question directly. In sense-making models, procedural ques serve as a tool to infer the fairness of the outcome, when objective outcome fairness information is unavailable. However, legal professionals have the benefit of being involved in many cases per year (usually for years on end). Most cases involve similar administrative decisions and are based on similar facts and similar (or even the same) circumstances, legislation and policies. All in all, it seems reasonable to expect that, in general, lawyers have some basic idea about the likely outcome that should (or could) be achieved. This makes the relevance of the sense-making function of procedural justice less obvious in our opinion.

With respect to relational models, it seems particularly relevant that lawyers are not the object of the procedures they are involved in, nor the objects of the decisions being challenged. It seems likely that, as they are involved in procedures in a professional capacity, lawyers do not infer their own personal standing in the community or group from the fairness of procedures enacted to offer legal protection to their clients. And, even if this were the case, as lawyers are repeat players, we propose it is not likely that the degree of procedural fairness of a single case will communicate an equally strong message of belonging as it does for their one-shotter clients. We therefore also do not expect the relational model to be the most important reason for relevance of procedural justice.

In our view, the instrumental model provides the most compelling explanation for the relevance of procedural justice to lawyers. According to this model, fair procedures are valued because they give the parties more indirect control over their outcomes. People hiring an attorney, generally do so because they feel it will increase their chances of a positive outcome. In essence, it is the job of the attorney to represent their client to the best of their ability so that a favorable outcome can be achieved. Unfair procedures, for example procedures that offer less opportunity for voice, make the attorney's job more difficult, while fair procedures provide lawyers with a better opportunity to do their job effectively.

While laypersons consider both relational and instrumental concerns in making judgments about procedural fairness, the literature shows that on the whole they assign more importance to relational concerns in their evaluations (for example: Haller & Machura, 1995). In our view, it is likely that lawyers do the opposite: While

both relational and instrumental concerns are likely relevant to some degree, instrumental concerns will carry more weight in fairness judgements. Accordingly, fair procedures matter to attorneys, because those procedures provide the best chance of reaching a fair and—equally important—favorable outcome for their client.

The empirical determination that self-interest concerns play only a limited role in procedural justice has been based on studies of lay people's justice judgments. Galanter (1974) has for instance argued that "as people become more experienced with litigation, they become more likely to focus on case outcomes." It might therefore very well be the case that lawyers are more inclined than their lay-person clients to evaluate procedures in terms of their contribution to favorable outcomes (Stalans and Lind, 1997).

Research has shown people most likely evaluate the fairness of procedures in light of the outcomes they produce. Knowing the outcome can influence the way people judge the fairness of the procedure (Landls & Goodstein, 1986; Tyler, 1996; Van den Bos et al., 1997). Procedural justice concerns mattered less to litigants if the outcome of their case was perceived to be positive and more if the outcome was perceived as negative (Grootelaar & Van den Bos, 2018). If we extend our line of reasoning, lawyers who view procedures and procedural justice primarily as instrumental, a similar pattern would emerge. A good end result is a good end result, regardless of the fairness of the procedure (or its characteristics) leading up to that result.

Why are Procedural Fairness Judgements of Lawyers Relevant?

There are at least two reasons procedural justice considerations of lawyers should be of scholarly interest. First, because attorneys function as intermediaries between their clients and the legal system (Felstiner et al., 1980), lawyers provide their clients knowledge of how particular legal processes work. In doing so, they play an important role in shaping legal consciousness: The way people make sense of law and legal institutions and how they give meaning to their law-related experiences and actions (Ewick and Silbey, 1998). Legal consciousness is not static, but a context-based concept, and constantly altered by experiences and interactions with the law (Ewick and Silbey, 1998). If lawyers see procedures with certain characteristics as less (or more) fair, this will most likely influence their communication with client about those kinds of procedures. This, it turn, could have effects on the way their clients evaluate their own experiences with the dispute resolution procedures themselves.

A second reason procedural justice evaluations of lawyers and other legal professionals are of particular interest, is because of the danger of "false consciousness." The focus on perceived procedural justice as an important indicator of the quality of a procedure, brings with it the danger that "giving the people what they want" becomes the primary purpose the procedural design process. However, if lawyers see procedures with certain characteristics as unfair, while their clients see them as more fair, it could be that litigants are falling victim to a "false consciousness" of the fairness of the legal system. As Lind and Tyler note "it is difficult to maintain

the system is really fair if experts see it as less fair than do naive participants." (Lind et al., 1990a, 1990b; Lind & Tyler, 1988, p. 4). By examining the experiences of legal professionals, the risk of creating a false consciousness could be illuminated.

Procedural Justice and Procedural Preferences

As was the case with the procedural justice literature in general, most studies of procedural preferences focus on lay persons. As a result, there is not much empirical evidence of any procedural preferences of legal professionals, nor on the factors that influence their preference. Why would lawyers prefer one method of conflict resolution over the other? Our argument presented earlier was that procedural justice matters to lawyers because, in short, it allows them to help their client achieve a positive outcome. If we extend this argument, we would also expect procedural characteristics that are expected to increase the chances of a positive result, to be associated with higher levels of procedural justice. As to what characteristics these are, we propose the answer to this question is dependent on the context and issue at hand.

Conceptual Model and Hypotheses

In this study, we distinguish two ways in which Dutch objection procedures can differ from one another: (1) the extent to which the focus of the procedure is on conciliation and (2) whether or not an independent third party is involved. Moreover, we propose that the level of discretion involved in the contested decision and outcome information serves as moderators of the association between these two characteristics and procedural justice. Our conceptual model can be found in Fig. 1.

We expect a link between the degree of conciliation and procedural justice. Conciliation involves an attempt to reach a voluntary agreement between parties through bridging competing interests. In objection cases, the goal of the procedure—from the perspective of the objectors' lawyer—is to get an unfavorable administrative decision changed or repealed to his client's benefit. If there are no or no meaningful conciliatory efforts made during the procedure, there is only one route to this goal:

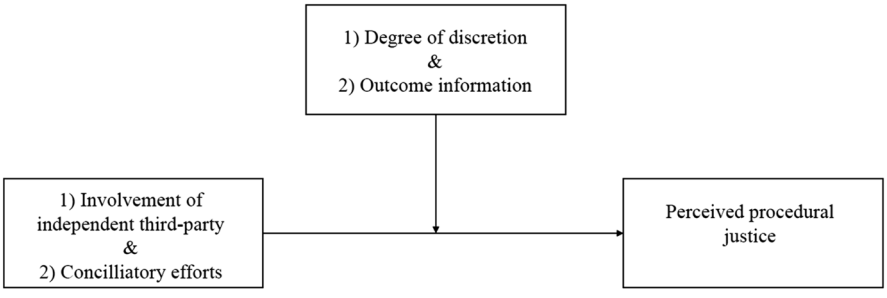

Fig. 1 Conceptual model

to demonstrate that the contested decision is unlawful and thereby force the administrative body to amend it.

If there are substantial conciliatory efforts made, this opens another potential route to success for the lawyer. Conciliatory efforts might result in a positive (or at least agreeable) outcome, even though the initial decision was lawful and strictly speaking does not need to be changed or repealed. If we propose the instrumental model of procedural justice is the most relevant to legal professionals, then we can argue that they will likely evaluate more conciliatory procedures as fairer than procedures that are focused on conciliation to a lesser extent. Conciliatory efforts do not take away from the possibility of achieving success by demonstrating that the decision is unlawful, but the adds the possibility of success by also exploring different solutions to the problem at hand. Our first hypothesis is therefore that we find a positive relationship between the degree to which conciliation is (perceived to be) an aim of the proceedings and procedural justice experienced by lawyers.

Dispute resolution procedures involving an independent third party adhere more closely to the traditional way of thought on how legal disputes should be resolved. It is commonly viewed that an adjudicator needs to be (institutionally and functionally) separate from the parties involved in the dispute, in particular if one of the parties involved in the dispute is an administrative body. Independence from the disputing parties is often seen as a prerequisite for fair procedures and necessary to and inspire confidence from the public (Thomas, 2011). The question is why the involvement of an independent party would be relevant to the procedural justice evaluations of lawyers. One obvious argument is that independence from the parties ensures impartial decision making, which in turn provides a better chance for a favorable outcome (Stalans & Lind, 1997). Another argument, more particular to our context, is that in the Dutch administrative objection procedure, the administrative body essentially holds all the cards. This means that, unlike in civil disputes and most criminal cases, from the perspective of the lawyer the opposing party (the administrative body) has the power to unilaterally decide what the outcome will be. The involvement of an independent third party creates a more level playing field, which in turn—at least in theory—increases the chances of a positive outcome. Based on these arguments, our second hypothesis is that lawyers will find procedures that involve an independent third party more procedurally fair.

A second element of our model concerns the moderating effects of the characteristics of disputes. We hypothesize that the strength of the relationship between the two characteristics of dispute resolution procedures mentioned before and the procedural justice experienced by users, depends on the nature of the dispute at hand. Our underlying assumption is that lawyers are outcome focused. This means they will prefer procedural characteristics that increase the likelihood of achieving a positive outcome for their client.

Discretion offers the administrative body the right to choose between more than one possible course of action. Disputes about the use of discretion are not only about the lawfulness (a matter of right and wrong) of the contested decision, but also about subjective preferences. It is precisely this second element where the involvement of an independent third party offers no benefit to objectors and could possibly even be considered harmful. We know that "outsiders" will need to exercise (or feel they

need to exercise) a significant degree of restraint when reviewing discretionary decisions. Bell, for instance, (2019) states that: "External review is good at requiring certain formalities in justification, but it is not very good at engaging with the substance of the reasons given for the decision."

While we assume the involvement of an independent third party will generally be considered more procedurally fair, in cases where the challenged decision is the result of the exercise of a high degree of discretion, independent reviewers will not be able to engage in the substance of the challenged decision to the same extent as the administrative body itself or its civil servants can. In those cases, it can be argued that lawyers are better off dealing directly (and only) with the administrative body as, in the end, this body needs to be convinced alternative options are a viable alternative to the initial decision. The involvement of an independent third party offers little benefit in terms of the likelihood of achieving a positive outcome in high discretion cases. Our third hypothesis is therefore that the positive association between the involvement of an independent third-party and procedural justice will be less pronounced (or absent) in cases where the administrative authority enjoys a higher degree of discretion. We expect procedural justice will be particularly high when an independent third party is involved in low discretion cases. In those cases, the involvement of an independent third party increases the chances of a positive result (compared to a two-party procedure), whereas in high discretion cases the benefits and drawbacks of the involvement of a third party cancel each other out.

Concerning the association between conciliatory efforts and procedural justice, we also assume this association is moderated by the degree of discretion. In particular, we propose that if there is little discretion involved in the contested decision, legal professionals will view conciliatory efforts in the dispute resolution phase as little more than symbolic. The law and facts dictate the substance of the decision, and in essence, conciliatory efforts cannot have any actual effect on the outcome. These efforts will therefore not be seen as genuine nor beneficial to their client (see also: MacCoun, 2005). In these cases, we do not expect conciliatory efforts to lead to higher degrees of procedural justice to the same degree as in high discretion cases. However, in high discretion cases the scope of the review is not limited to the question if the contested decision was right or wrong, but offers opportunities for compromise. We hypothesize that the positive association between conciliatory efforts and procedural justice will be more pronounced in cases where the administrative authority enjoys a higher degree of discretion. In those cases, if conciliatory efforts are low, fairness evaluations will be especially low as more conciliatory efforts could have boosted the chance of success.

Our final hypothesis involves the outcome of procedures. Procedural justice concerns mattered less to litigants if the outcome of their case was perceived to be positive and more if the outcome was perceived as negative (Grootelaar & Van den Bos, 2018). To our knowledge, the effects of outcome judgements on procedural justice evaluations have not been extensively researched from the perspective of lawyers. It is therefore valuable to examine the influence of the outcome information on the relationship between the characteristics of a dispute resolution procedure and procedural justice in an exploratory way. In particular, we examined if the association between procedural characteristics and procedural justice will be weaker if

people know they achieved a *positive* result, and stronger if they achieved a *negative* result compared to when the result is unknown. There is evidence this is the case for litigants. We expect, as our proposition is that lawyers are even more outcome focused, the same to hold true for them. This means that we expect that a positive result diminishes the importance of the characteristics of the procedure that led to this result, while a negative result boosts the relevance of procedural characteristics (compared to an unknown result).

Methods

The data used in the study were collected by a self-report online survey. Potential respondents were asked to fill out an online questionnaire about the most recent objection case they were involved in, mimicking as much as possible the situation where the researcher approaches potential respondents immediately after a hearing is concluded (for example, Grootelaar & Van den Bos, 2018; Ansems, 2021). The web survey questionnaire consisted of three parts. In the first part of the survey, respondents were asked several questions about the characteristics of the most recent objection case they were involved in. In the second part, they were asked about the characteristics of the objection procedure itself. Finally, respondents were asked to respond to several statements used to measure perceived procedural justice.

Drawbacks of online methods of data collection—for instance compared to face-to-face methods—are lower response rates and higher dropout rates. However, web surveys offer the potential to reach a large number of potential respondents with minimal costs and effort for the researcher. Prior research has shown web surveys are a valid method to study matters of procedural justice (Rosenbaum et al., 2015). The design of this study allows for the inclusion of a larger number of different objection procedures. This ensures ample variety in the characteristics of procedures that end up in the sample (the independent variable in the study). An important drawback of our design is that it is cross-sectional and all of our variables are measured, not manipulated. It is therefore not possible to make any causal inferences.

To select potential respondents (lawyers active in administrative law disputes) we examined published rulings of the Dutch administrative courts (www.rechtspraak.nl). In those rulings, the name of lawyers that have represented citizens in administrative disputes can be found. The email addresses of the lawyers were looked up using the search engine Google and/or the website of the Dutch Bar organization. In total a database containing 1532 Dutch lawyers and other professional representatives was constructed. Potential respondents were invited by (personalized) email to participate in the study. Ten days after the initial invitation a reminder email was sent, and after another week a final opportunity to participate in the study was offered. In total 371 respondents started the web survey; 213 completed it giving a response rate of 15%, which is low but not uncommon for web surveys. Due to the high homogeneity of respondents, we did not weigh the responses. The first response was collected on the November 29, 2017, the final response on the February 21, 2018.

The vast majority (88%) of respondents were practicing attorneys at law, with only 12% serving as professional legal counselors in some other capacity (for instance, on behalf of legal insurance providers). In total, 58% of respondents were males and 42% of respondents were females. The oldest respondent was 73, the youngest 25 years old. The average age of respondents was 45 years. On average, respondents had been active as a legal aid professional for 16 years at the time of completing the survey. The least experienced respondent had one year of working experience, the most experienced respondent 48 years. Further, respondents reported spending an average of two-thirds (66%) of their working hours providing legal aid in administrative law disputes. Half of the respondents spent more than 70% of their working hours providing legal aid in administrative disputes, one in five even more than 90%. In short, the respondents who filled in the questionnaire were mostly experienced legal aid providers who were involved in administrative law disputes for the vast majority of their working hours.

Measurement of the Main Variables

Procedural Justice

Our first concern was to establish a measurement of our primary dependent variable procedural justice. A distinction could be made between "subjective" and "objective" procedural justice. The latter could for instance involve our respondent's views of how fair the objection procedure is in some overall sense (for example vis-a-vis other procedures they have experienced). In this study we aimed to measure the respondents own subjective, or personal, evaluation of the fairness of the objection procedure they were most recently involved in.

A study by Lind et al. (1990b) demonstrated that attorneys and litigants appear to use the same standards to evaluate the fairness of procedures. We therefore opted not to develop a fully novel procedural justice scale. Instead, we constructed a shortened scale based on six statements derived from earlier literature focused on the experiences of lay-persons involved in the Dutch administrative objection procedure (Van den Bos et al., 2014). In that study procedural justice was measured using three items "I was treated in a polite manner," "I was treated with respect," and "I was able to voice my opinions."

However, for further research the authors recommended to expand upon their 3-item measure with items assessing: (1) the degree to which citizens feel that due consideration was given to their views, how (2) fairly and (3) justly they feel they were treated by the officials during the procedure and whether they experienced these officials as (4) competent and (5) professional.

In order to shorten our questionnaire, with the aim of decreasing the dropout rate, we opted not to include both competency and professionalism items, as we feel the distinction is subtle at best (Matveevskii et al., 2012). We chose to only include the competency item in our survey as it has a less ambiguous meaning in our view. Likewise, with respect to the "opportunity for voice" and "being listened to sincerely" items, the latter implies the former (not vice versa). We therefore opted to include

only the "being listened to sincerely" item in our survey. All in all, we ended up with a six items that could potentially measure procedural justice:

"I think the person conducting the hearing performed their job honestly,"
"I was treated with respect,"
"My opinion was been listened to sincerely,"
"I have been treated fairly,"
"I think the person conducting the hearing was competent",
"I trust that a fair decision on the objection will be taken".

Responses to the procedural justice items were measured using a five-point Likert scale (1 = *Strongly disagree,* 5 = *Strongly agree).* The internal consistency of the scale was high ($\alpha = 0.92$). In addition, the questionnaire contained five items on the legal competence of the person conducting the hearing. These items were not used in this study, as it is not a variable of interest for our current purposes.

Independent Variables

The analysis involved two characteristics of objection procedures. The first was the degree to which *conciliation* was perceived to be an aim of the proceedings, the second the involvement of an independent third party.

Conciliation

To measure the conciliatory efforts, we could not rely on previously validated items. The items used to measure the concept were loosely based on earlier research into functioning of the Dutch administrative courts (Marseille et al. 2015). A conciliator, more so than a mediator, actively seeks to contribute to finding a mutually agreeable solution for the parties involved in the dispute. Recent Dutch administrative court reforms sought to increase the problem-solving capabilities of administrative courts. New general standards were enacted, requiring administrative courts to (1) not limit the discussion during the hearing to legal questions, (2) to actively find out what the claimant's actual "problem" is and (3) to attempt to find a solution to that problem.

To measure the extent to which conciliation was perceived as an aim of the procedure, we constructed three statements taking the general idea behind the Dutch court reforms as a basis: "During the hearing, more than just the legal dispute points were discussed," "The person conducting the hearing asked questions to find out 'what the dispute is really about'," "The hearing was used to find a solution to the dispute." All responses were measured using a five-point Likert scale (1 = *Strongly disagree,* 5 = *Strongly agree).* Cronbach's alpha ($\alpha = 0.63$) was lower than the threshold of 0.70, but we considered it acceptable for a three-item scale. The intercorrelations between the three items ranged from 0.20 to 0.50, and the item-total correlations from 0.33 to 0.58. Removing the first item on legal dispute points would increase Cronbach's alpha somewhat ($\alpha = 0.68$), but we believe that retaining this items gives a better representation of the full construct of conciliation. The three items were

averaged to form a scale with higher scores indicating that the procedure was perceived to be more focused on conciliation.

The Involvement of an Independent Third Party

Objection hearings can be conducted wholly or partly by the administrative authority itself or by a civil servant who was not involved in the preparation of the disputed order (or two or more civil servants of whom the majority, including the person chairing the hearing, was not involved in the preparation of the disputed order). Alternatively, the administrative authority can establish an independent advisory committee.

To assess if there was an independent third party involved in the procedures we asked: "Who conducted the hearing/informal meeting?" The three options provided were: (1) "The administrative authority," (2) "One or more civil servants," (3) "A committee with an independent chairman." It is very rare for (members of) administrative authorities to conduct hearings (Wever, 2018). We chose to dummy code the responses as the different values have no real-world numerical relationship with each other. Therefore, for the purpose of our analysis procedures chaired by administrative authorities or one or more civil servants were dummy coded as *0.* Procedures where the hearing was chaired by an independent person were coded as 1.

Moderating Variable: Characteristics of the Dispute

The degree of discretion involved in decision making can be seen as a continuum and not necessarily as "either-or" alternatives (Galligan, 1996; Grey, 1979). The degree to which the administrative body was perceived to have discretion was measured by asking the following question: "Administrative bodies can have more or less freedom of choice when making decisions. Sometimes the statutory regulation prescribes the exact decision to be made under certain circumstances (non-discretionary power), sometimes the administrative body has to weigh the interests involved and is left with room for choice (discretionary power). What kind of decision is involved in this objection case?" The responses were measured using a five-point scale (1 = *non-discretionary power*, 5 = *discretionary power*). A higher score therefore indicates a larger perceived degree of discretion on the part of the administrative authority.

Other Socio-Legal Variables

Outcome Information

In administrative law procedures, it is not common that a decision is reached immediately after the hearing is concluded. More often, a written decision is issued several weeks after the hearing. Due to our chosen research design and focus, we assumed some respondents would be aware of the outcome of their dispute at the time of filling out the questionnaire, but the majority would not be. Nevertheless,

because we hypothesized that outcome information is relevant to procedural justice considerations, we included it in our analysis.

If the respondent indicated he/she was already aware of the outcome of the procedure, we asked what happened to the disputed decision. The goal of any objection is to challenge an initial decision with the goal of having it changed in the objectors favor or repealed altogether. If the respondent stated the initial decision *remained unchanged,* this indicates the objection was unsuccessful. If the respondent indicated the disputed order was *changed* or *repealed*, this indicates that the procedure was successful. The collected responses were used to create two dummy variables, with an unknown outcome as the reference category. The first dummy variable was used to measure the effects of winning, the second dummy variable was created to measure the effects of losing.

In addition to the main variables, we also included age and gender as background variables.

Results

As the dependent variable in our model was measured on the interval level and our model includes multiple independent variables, we used a multiple linear regression analysis to test our hypotheses. Our procedural justice scale was coded so that higher scores indicate higher levels of procedural justice. A positive regression coefficient therefore indicates that an increase in an explanatory variable was, controlling for the other variables in the model, associated with a higher level of procedural justice. A negative regression coefficient indicates that an increase in the value of an explanatory variable, again controlling for the other variables in the model, is associated with a lower level of procedural justice. Our predicting variables were added to the regression hierarchically: the first step containing the characteristics of the procedure, the second step the degree of discretion and outcome information, the third step the interaction terms. The (non-dummy) predicting variables were centered before being entered into the regression analyses as they were used to compute interactions, to reduce multicollinearity (Cohen et al., 2003).

The correlations and descriptive statistics including means and standard deviation for our main variables, socio-legal variables and background variables are presented in Table 1.

Table 1 shows that there was no statistically significant association between gender and age and our dependent variable procedural justice. Therefore, these background variables were not included in the analyses.

The two procedural characteristics represented in our model together predicted roughly 16 percent of the variation in procedural justice (R^2_{adj} for Step 1 in Table 2). Our first hypothesis was that we expected to find a positive relationship between the degree to which *conciliation* is (perceived to be) an aim of the proceedings and procedural justice experienced by users. Our second hypothesis was that we would find a positive relationship between the involvement of an independent third-party and perceived procedural justice.

Table 1 Descriptive statistics and correlations

Variable	M	s.d.	1	2	3	4	5	6	7
1. Procedural justice	3.69	.75	–						
2. Involvement of third party (0 = no, 1 = yes)	.30	–	.10	–					
3. Conciliation	2.89	.85	.40**	.07	–				
4. Discretion	3.33	1.46	− .08	.12	.03	–			
5. Positive outcome	0.18	–	.17*	− .04	.13*	.15*	–		
6. Negative outcome	0.27	–	− .20*	− .07	− .11	.04	–	–	
7. Age	44.86	11.96	.01	− .13	− .14	.02	− .05	.13	–
8. Gender (0 = female, 1 = male)	0.58	–	.00	− .05	.10	.01	− .04	− .00	.21**

*$p < .05$, **$p < .01$

Table 2 Summary of hierarchical regression analysis for variables predicting procedural justice

	Step 1		Step 2		Step 3	
	B	S.E	B	S.E	B	S.E
Intercept	3.67**	0.06	3.70**	.08	3.69**	0.08
Involvement of third party (0 = no, 1 = yes)	0.12	0.11	0.13	0.11	0.10	0.14
Conciliation	0.35**	0..06	0.33**	0.08	0.23**	0.08
Discretion			− 0.04	0.03	− 0.06	0.04
Positive outcome			0.15	0.14	0.26	0.16
Negative outcome			− 0.22	0.12	− 0.23	0.13
Conciliation x discretion interaction					0.08*	0.04
Third-party involvement x discretion interaction					0.13	0.08
Conciliation x positive outcome interaction					− 0.12	0.16
Conciliation X negative outcome interaction					0.31*	0.13
Third-party involvement X positive outcome interaction					− 0.23	0.29
Third-party involvement X negative outcome interaction					0.12	0.26

*$p < .05$, **$p < .01$

R^2_{adj} Step 1 = .16, R^2_{adj} Step 2 = .18, R^2_{adj} Step 3 = .23

F change Step 1 = 18.6, P = .001, Step 2 = 3.0 = P = .033; Step 3 = 4.1, p = .003

As shown in Table 2, conciliation explained a significant amount of variance in procedural justice. Respondents who perceived the procedure to be more focused on conciliation, also experienced more procedural justice. This finding supports our first hypothesis. The involvement of an independent third party did not statistically significantly contribute to the regression of procedural justice. Contrary to our expectations, respondents did not find procedures that involved an independent third party more procedurally just. This finding does not support our second hypothesis. We expected the positive relationship between the involvement of a third-party and procedural justice to be weaker, if the administrative body was perceived to have

more discretion (hypothesis 4). However, no significant moderating effect of the degree of discretion was observed concerning the association between the involvement of a third-party and procedural justice.

We also expected that the degree of discretion would affect the strength of the association between conciliatory efforts and procedural justice (hypothesis 3). In particular, we assumed that the positive association between conciliatory efforts and procedural justice would be weaker if the administrative authority was perceived to have low levels of discretion. Our data confirmed this hypothesis. The observed association is demonstrated in Fig. 2.

The figure shows procedural justice as a function of conciliatory efforts being relatively low (–1 s.d.) and relatively high (+1 s.d.) and the degree of discretion being relatively low (-1 s.d.) and relatively high (+1 s.d.). As we predicted in our third hypothesis, the degree of perceived discretion moderated the relationship between conciliatory efforts and procedural justice. In disputes involving decisions with a relatively high degree of perceived discretion, the positive association between conciliatory efforts and procedural justice was more pronounced. Simple slope analysis showed that there was a significant relationship between conciliation and procedural justice when discretion was high, $b = 0.35$, s.e. $= 0.09$, $p < 0.001$, but not when discretion was low, $b = 0.12$, s.e. $= 0.10$, $p = 0.286$. Procedural justice was especially low when conciliation efforts were low in high discretion cases.

We finally explored whether the association between characteristics of the procedure and experienced procedural justice depended on whether the outcome of their procedure was positive, negative or unknown. There was evidence for a moderating effect of the outcome on the association between conciliatory efforts and procedural

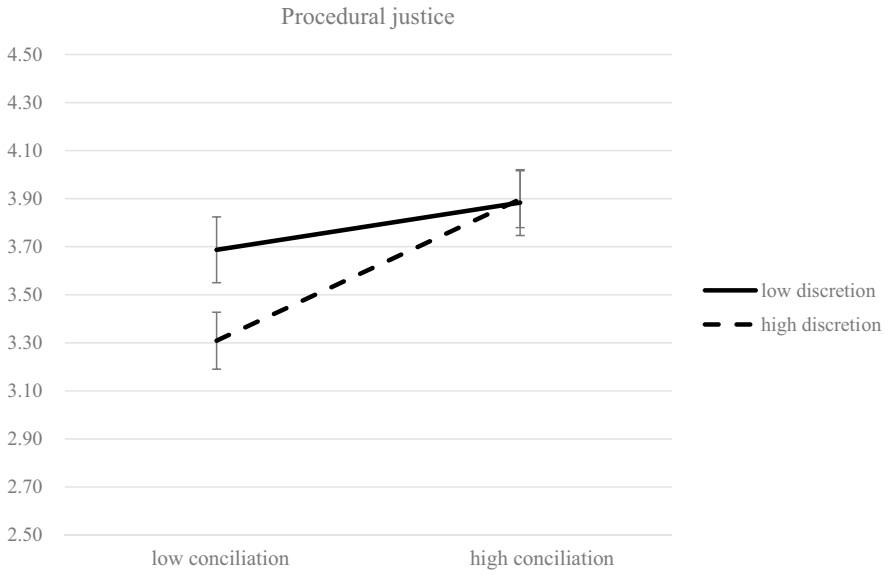

Fig. 2 Interaction between conciliatory efforts and discretion on procedural justice (with error bars, indicating the standard error of the prediction)

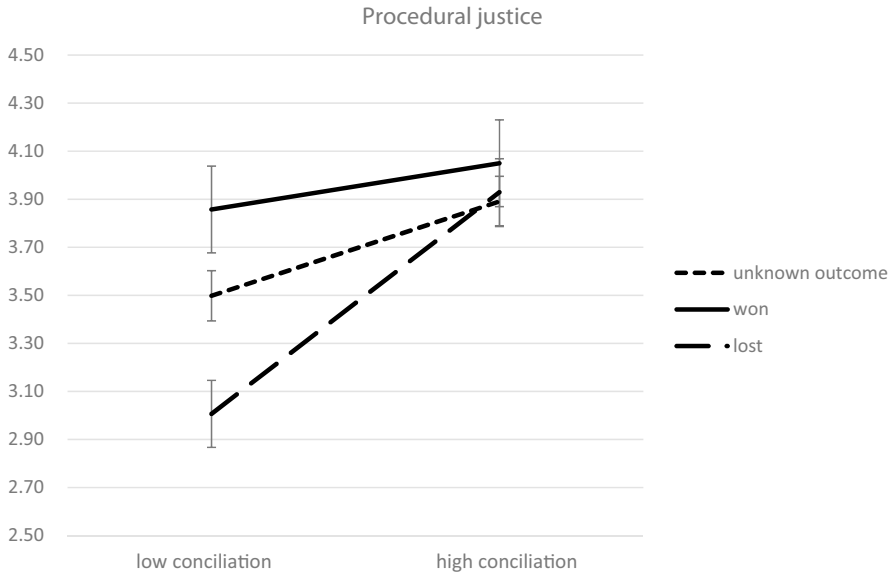

Fig. 3 Interaction between conciliatory efforts and positive outcomes on procedural justice (with error bars, indicating the standard error of the prediction)

justice, but not for the involvement of an independent third party (see Table 2). This association did not differ between unknown and positive outcomes, but it did differ between unknown and negative outcomes. This effect is illustrated in Fig. 3.

The figure depicts procedural justice as a function of conciliatory efforts being relatively low (– 1 s.d.) and relatively high (+ 1 s.d.) for respondents who were unaware of the outcome, who lost the procedure or who won the procedure. The association between conciliatory efforts and procedural justice is weakest for the group of respondents that received a positive outcome and strongest for the respondents that received a negative outcome. Simple slope analysis showed that there was a significant relationship between conciliation and procedural justice for respondents who lost, $b = 0.54$, s.e = 0.11, $p < 0.001$, and for those with an unknown outcome, $b = 0.23$, s.e = 0.08, $p = 0.004$, but not for respondents who won the procedure, $b = 0.11$, s.e. = 0.14, $p = 0.420$. In other words, conciliatory efforts where especially important to maintain high levels of procedural justice for those lawyers who lost their case.

Discussion

Are conciliatory efforts and the involvement of an independent third party associated with higher levels of procedural justice evaluations of attorneys? And is the level of discretion relevant to the answer to this question?

Our study suggests that this is only partly the case. The involvement of an independent third party was not associated with higher levels of procedural justice,

regardless of the extent to which the administrative authority was perceived to have discretion. On the one hand, this is a surprising find, as the involvement of an independent neutral third party is traditionally viewed as an essential element of a "proper" dispute resolution procedure. However, perhaps the study did not find a link between the involvement of an independent third-party and procedural justice, because lawyers have more faith in the objectivity of legal decision makers or of the legal process, regardless of decision maker's position, than a litigant might. This would mean that the involvement of an independent third party—in our context and to our respondents—does not increase the likelihood of a positive outcome, regardless of the level of discretion. If our assumption that lawyers' fairness evaluations are related to outcome concerns holds true, this would explain the absence of our predicted association.

We did find a positive association between procedures that were focused more on conciliation and procedural justice. This positive association was more prominent in cases where the administrative authority was perceived to have a relatively high degree of discretion. Lawyers' instrumental view of procedural justice can indeed account for such an effect. Several studies noted that adversarial procedures are considered fairer because they offer the most opportunity to present one's own case, thereby increasing the odds of achieving a favorable outcome. However, in administrative law disputes consensual procedural alternatives are perhaps associated with higher fairness perceptions because of the very same reason. They do not take away from the possibility of achieving a favorable outcome by demonstrating that the decision is unlawful, but the add to the chance of success by exploring different solutions to the problem at hand even when the contested decision is lawful as it was. In any case, when it comes to the fair resolution of disputes, it appears there is more than one way to skin a cat.

Our data indicate that conciliatory efforts by the reviewer were related to higher experienced procedural justice the most when the outcome was unfavorable. This confirms at least to some degree that outcomes are indeed an important factor for the salience of procedural characteristics for lawyers. This extends earlier literature which shows that procedural justice is especially relevant when a procedure ends in a negative outcome (e.g., Grootelaar & Van den Bos, 2018). This means that unfavorable outcomes not only increase the relevance of procedural justice, but also the relevance of conciliation in boosting the experience of procedural justice.

In sum, conciliatory efforts on the part of the reviewer of administrative decisions appear to be positively associated with the procedural justice evaluations by attorneys, in particular when the disputed decisions involved the exercise of administrative discretion and in particular when the outcome of the procedure was unfavorable.

Limitations and Directions for Future Research

Our study concerned a relatively complex conceptual model. Of course, there might be multiple plausible relationships between the variables we explored. With our current research design, we cannot establish causal relationships, nor can we rule out the possibility of multiple causal directions. For example, perceptions of

procedural justice could have influenced perceptions of conciliatory efforts. Our study, with its cross-sectional design, is not well-placed to robustly test the direction of these complex relationships. While there is much value in collecting data from real-life cases, further testing of our findings is required using a different type of design.

Another obvious limitation of our study is that we zoom in on the experiences of professional legal representatives, which limits the generalizability of our results to the general public. It remains to be seen that if the research had been aimed at the experiences of the litigants they represent, similar results would have been found. That being said, the "lawyer as shark" metaphor, although a caricature (Galanter, 2005), reflects a widely held view that lawyers must be aggressive and tough in order to best protect their clients' interests. It seems telling that even people trained in and used to the *traditional* adversarial trial model of dispute resolution, and therefore perhaps more critical or even cynical of procedures that deviate from this model, found more conciliatory procedures to be more procedurally just.

In our study we did not explicitly address legal representatives' own perspective on their role in the dispute resolution process. Stalans and Lind (1997) differentiate between representatives who are more oriented toward authorities (e.g., the correct application of the law) compared to representatives who are oriented toward their clients' concerns. Our assumption was that attorneys are oriented toward their clients' concerns. We argued that their primary focus is on reaching the best outcome for their client, and that procedural characteristics are instrumental in that they either help or work against them in achieving this end. Our results do hint that the lawyers included in our sample are focused more on their clients' interests. Conciliatory efforts were associated with higher levels of procedural fairness, while those efforts do not primarily revolve around the correct application of the law. Further research explicitly incorporating lawyers' own orientation on their role in the resolution of conflicts could add to our understanding of the relationship between procedural characteristics and procedural fairness.

One of the more surprising findings of our study was that there seems to be no positive association between the involvement of an independent third-party and procedural justice. Two remarks are in order here. First, litigants might be more sensitive to this characteristic of a procedure than their attorneys are (MacCoun et al., 1988). Secondly, as our study focused on the Dutch objection procedure, truly "external" procedures—where there is a clear institutional separation between the original decision maker and reviewer—were not included in the analysis. Further research, allowing for a comparison between truly internal and external dispute resolution procedures—meaning a third party has a mandate to decide the outcome irrespective of the parties' wishes—would be valuable to further test the relationship.

Finally, to measure our main dependent variable (procedural justice) we did not create an (essentially) new construct tailored specifically to legal professionals such as attorneys. A standalone study dedicated to this goal, allowing to fully tests all psychometrically relevant properties—e.g., convergent validity, discriminant validity, etc.,—could contribute to the development of a novel procedural justice scale for legal professionals. Similarly, the scale used to measure the concept of "conciliation"

could also be improved upon (illustrated by the relatively low Cronbach alpha in our study).

Policy Implications

First a more general note. Designing procedures in order to maximize perceived procedural justice does indeed align well with the noble goal of user-centered design, as it maximizes the extent to which users perceive legal decision-making procedures as fair. However, as MacCoun's (2005) writings around the "double-edged sword of procedural fairness" demonstrate, there are potentially some ethical concerns around designing procedures to maximize perceived fairness. Just because procedures with certain characteristics are perceived as more fair, this does not mean they *are* more fair in a more general sense or lead to more substantively fair outcomes. In sum, the finding that a conciliatory approach is positively associated with procedural fairness perceptions among legal professionals, even though they might be less easily "fooled" than the average lay-person, does not necessarily imply that it is the "best" way to resolve administrative disputes in a more general sense.

Secondly, as the literature shows and our paper shows, procedural preferences are not by any means hardwired. Procedural fairness considerations, and how they relate to procedural characteristics, depend to a degree on the nature of the issue at hand. In this paper we examined discretion, but other factors could be relevant as well. Rather than demonstrating that one type of procedure (a more conciliatory one) is better than others, or that some characteristics of procedures might not be as relevant (the involvement of an independent third party), our study primarily shows that it is highly unlikely that universally fair procedures exist even when we limit ourselves to the relatively small group of lawyers involved in administrative disputes.

When it comes to fair procedures, there are many relevant factors to consider, so a one size fits all solution will not likely yield the results policy makers might be searching for. Rather than a one size fits all (disputes and claimants) approach, offering more than one route to resolve disputes seems a more promising way forward. The Dutch objection procedure, with its built-in procedural flexibility, is a good example in that respect. However, selecting the "right" procedure for the right dispute (and the right disputant) in a particular case remains a challenging puzzle to solve.

Funding This research was not funded by a third party.

Data Availability All data are available upon request.

Declarations

Conflict of interest The authors have no conflict of interest.

Ethical Approval The research design was approved by the Ethical Research Committee of the University where the primary author works. No copyrighted materials were used.

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