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Is It a Human Instinct to Seek Procedural Justice? Answers from Evolutionary Psychology

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Abstract. Procedural justice is one of the foundational principles of modern social governance. The different views of the academic circles on its origin have become "innate" and " acquired" schools. However, the division between these two camps has hindered the practical application of procedural justice in governance. The debate between the two camps centers on the question of whether people's inclination towards procedural justice is innate or acquired. What role does social indoctrination play in the formation of procedural justice? Research from developmental psychology has found that humans are born with a predisposition to procedural justice, which evolves and matures with age and cognitive level.

Keywords: procedural justice; innate; philosophical psychology.

1. Introduction

In the field of legal philosophy, the source of procedural justice is related to the specific use of procedural law in judicial practice. The discussion of this issue has gradually evolved into two opposing views: one view is that the tendency towards procedural justice of human beings is innate, and that procedural justice is one of the value pursuits of human beings. The other view is that people are just innately willing to choose the procedures that are conducive to their getting better results, and that the so-called tendency towards procedural justice is merely to use it as a tool to obtain a good outcome but has no value in itself. The controversy between the two views have further evolved into a dichotomy between “procedural departmentalism” and “procedural instrumentalism” [1]. Essentialism agrees with the innate nature of procedural justice and believes that true justice should not only be about the outcome, but also about the procedure itself. In contrast, instrumentalism does not recognize the innate nature of procedural justice but believe that the measure of justice only is the extent to which substantive justice is achieved, and that the procedure itself is only a means and a tool to be used. It can be seen that the crux of the argument lies in whether procedural justice is innate and whether it should be treated as a value to be pursued.

This debate has led to a deeper reflection on justice, and that led to a number of ideas conducive to judicial reform and national governance, however, this debate has still created dilemmas in real life. Because of Rawls's great influence and the stronger operability of “procedural departmentalism” in practice, it has become a consensus that "procedure is more important than result". However, the excessive praise of procedure could cause it becoming the incentive to destroy justice. In the 1994 Simpson case, the prosecutors dismissed key evidence and acquitted Simpson on the grounds of procedural impropriety, leading to massive public skepticism about the justice of the judicial procedure. This is not an uncommon phenomenon, and the field of law has found that “procedure over results” can eventually lead to "institutional deviation" [2], meaning that a certain irrationality of procedure could make its results divert from its good intentions.

The phenomenon of "institutional deviance" has led researchers to rethink: (1) whether individual's tendency towards procedural justice is innate or acquired? (2) What is the role of social indoctrination in the formation of procedural justice? The laws of science tell us that a question that has long been unresolved is difficult to resolve in its original theoretical dimension. One of the reasons why the debate between the innate and acquired nature of procedural justice has remained unresolved for so long is that neither side has enough solid factual evidence to validate at the practical level. Since the 1970s, psychologists have also been studying procedural justice and have provided empirical evidence to address the integration of the two perspectives on procedural justice. On the question “Are people's tendencies towards procedural justice innate or acquired?”, studies of

human infants have found that infants are more likely to accept a just process even if the final outcome is the same. Besides, the view that procedural justice is not only an independent value but also an innate human instinct is supported by related animal experiments. Furthermore, the question "What is the role of social indoctrination in the formation of procedural justice?" has been examined in studies of children of different ages, which found that although the pursuit of procedural justice is an instinct, this instinct matures with age and cognitive development.

2. The debate over the innate and acquired nature of procedural justice

Scholarship is divided between the "innate school" and the "acquired school" on the question of the origins of procedural justice. The former believes that certain principles of procedural justice are innate, embedded in human nature through a long history, and that these principles form the basis for the existence of procedural justice. Thus, in the practice of justice, procedural justice has to be taken as a value in itself, but not just outcome justice. For example, Rawls believed that in order to ensure social justice and good order, human beings could naturally establish some universal, innate and unshakable social concepts through "reflective equilibrium", such as equality and freedom. Rawls also believed that these social concepts should be universally recognized and commonly followed by human beings. The reason why Rawls believed that these innate ideas existed, or that a definable set of order could be established based on certain innate rules, was to find a relatively objective basis for procedural justice and thus to establish a normative legal theory.

However, this view was criticized by Habermas, who argued that the principles of freedom and equality in Rawls were based on his abstract theory. He argues that there are no innate principles, and that people choose procedural justice because they have gradually developed some universal rules in the course of long historical interactions. Procedural justice is the product of historical interaction, and people's preference for procedural justice and its principles are gradually formed after the day. In other words, "Dialogue is used to obtain normative validity requirements" [3]. As can be seen, Habermas is using a set of arguments similar to "cultural relativism", which may lead to the result that since procedural justice has no innate norms, it may simply be the product of some general prevalence adopted by people to satisfy certain needs. This product would be naturally discarded by history with needs change. As a result, the efforts to build a normative jurisprudential theory on this basis are unlikely to be fruitful.

In reality, it is obviously impossible to directly prove the existence and congenital of the independent value of procedural justice, because the choice in reality is always interfered by various factors. Developmental psychology, however, offers a solution to this problem. Developmental psychology is a sub-discipline of psychology that explores the internal and external causes of human psychological development through the study of the role of genetics and the environment in shaping human behavior. Through a phased study from newborn to adult, developmental psychology could also reveal the influence of human innate factors and the acquired environment on human psychology over the full course of a person's life. In terms of research methods, developmental psychology can discover basic human behavioral tendencies through large-scale observations and statistics, or it can design experiments to study the influences on a particular behavior. For example, the perception of procedural justice from infancy to adolescence has also been an area of research in developmental psychology.

Developmental psychological research has found that, (1) on the question of whether people's tendency towards procedural justice is innate or acquired, human infants already have the ability to identify unjust procedures and have a tendency to choose just procedures. That is to say, justice is an instinctive need, and this is supported by animal experiments, which show that choosing fairness is a common tendency in higher animals. (2) on the question of the role of socialization in the formation of procedural justice, it was found that older children gradually acquire the ability to recognize complex procedures and show a more obvious tendency towards procedural justice.

3. The pursuit of procedural justice as an instinctive human need: evidence from human infants and animal experiments

Infant experimentation is an important research method in psychology and is used to identify behavioral tendencies that humans are born with or develop early in life. The research has found that human infants have the innate ability to recognize procedural justice, at same time, they would make a rejection response on the simple instances of procedural injustice. Although infants do not have the ability to use explicit language to express preference or disapproval for procedural justice, but their gaze time in the allocation procedure and later behavior may reflect their dissatisfaction with unjust allocation and their preference for just allocators at an implicit cognitive level [4].

Sloane and cooperators found that 19-month-old infants had an expectation of a just distribution of resources [5]. Specifically, if both infants completed a task set by the experimenter, they would expect the same reward, while, but not if only one of them completed the task and the other was just playing. Moreover, this result only occurred when they were supervised by the experimenter, suggesting that the infants were primed to judge the source of the injustice. Furthermore, Surian and Margoni found that children as young as 20 months old were already able to discriminate between consistency and inconsistency in helping procedures. In the experiment, the researchers showed a video for 20-month-old infants that a protagonist offer help to two other recipients. In one scenario, the protagonist impartially helped both recipients simultaneously. In the other scenario, the protagonist biasedly helped one of the recipients immediately, while the other recipient waited longer to be helped. Although each recipient was eventually helped in both scenarios, the results revealed that infants watched the biased help scenario for a longer time than the unbiased help scenario. Even more significant experimental results were found when the age was extended to three years. Baumard found that in a simple story situation, three-year-olds could distribute rewards based on the amount of contribution from each person in the task [6]. More importantly, Kenward and Dahl found that in the resource allocation game, the children around three years old prefer to share resources equally among recipients when they are not the beneficiaries of the resource allocation [7].

Psychologists often use animal experiments to explore primitive human instincts, and the findings of the animal experiments could also support this view. The famous animal psychologist Waal devised an experiment in which two capuchin monkeys could exchange pebbles for food from the experimenter. At first, the two monkeys were given the same food (cucumber), and then the two monkeys exchanged food with approximately the same frequency. At this point, the experimenter changed the rule and gave one monkey a tastier grape and the other still a cucumber, at which situation the monkey given the cucumber was unwilling to exchange food and even showed anger, throwing the pebble and cucumber out of the cage. Bonobos, thought to be one of our closest relatives, have also been found to have a strong sense of justice. When a bonobo is given a tasty meal, it does not eat it immediately, but keeps gesturing to the experimenter and its companion until the experimenter gives its companion the same food [8]. Similar phenomena have even been found in non-primate animals, for example, grey parrots would protest when their companions are given more cauliflower; dogs refusing to carry out instructions if they are not given the same reward as their companions after performing a task. This series of animal experiments could show that the pursuit of justice is universal among higher organisms, which forms a behaviors cluster of animal justice along with the principles of equality and sharing [9].

4. Further evidence: procedural justice convergence matures with human cognitive development

Does the innate preference for procedural justice of infants mean that Habermas' view is wrong? This is not in fact. Habermas believed that standards of procedural justice are gradually developed in the course of human social interaction. In his view, in order to survive, human beings have to

interact with each other, and then the principles of procedural justice would be gradually developed in the process of interacting. At the same time, for social interaction to go smoothly, the individual need certain cognitive abilities, which Habermas calls "communicative aptitude". Habermas' hypothesis is supported by psychological experiments with children of different ages. Experiments with different age groups show that people's ability to use procedural justice matures with age and cognitive ability, and then they could develop the ability to discern complex procedures. While Innate tendency is difficult to guarantee procedural justice. The tendency towards procedural justice shown by infants and young children could not suggest that human preferences for procedural justice are entirely innate. After all, the achievement of procedural justice involves a set of rules, the understanding of which requires a certain level of cognitive ability.

Grocke and his cooperators examined 5-year-olds' perceptions of procedural justice using both equal and unequal carousels and found that half of the children chose the equal carousel to allocate excess resources. At the same time, they would generally accept an unequal distribution if it was made by an evenly distributed spinner; conversely, they would mostly reject an unequal distribution if it was made by an unjust spinner [10]. In addition, the researcher asked a child to act as a distributor to distribute items to two recipients, at which point the child generally chose a just distribution. While, at the end of the distribution, the experimenter gave an additional item to the child, which the child could choose to throw away or to distribute unfairly. In the end, they found that children aged 6 to 8 years preferred to throw the additional item away rather than to distribute unfairly, even when the child was one of the recipients [11]. These results illustrate that children between the ages of 5 and 8 can deal with more complex procedural justice problems.

And as they get older, children can develop the ability to use procedural justice to make other judgments. Fry and Corfifld studied how children around the age of 10 make judgments about authority and found that procedural justice plays a more important role when children make judgments about authority figures [12]. Fagan and Tyler found that when the law was too harsh or that those who enforced it did not administer it fairly, children between the ages of 10 and 16 would lower their evaluation of its legal reasonableness and report a cynical attitude towards it [13]. In addition, Murphy found that adolescents were more likely to associate with police officers who enforce the law fairly [14].

In addition to comparing children's judgments of procedural justice at different ages from the different experiments described above, some studies have also examined the evolution of children's and adolescents' behavior in the same experiment. Shaw and Olson analyzed the propensity to use just or unjust procedures to allocate prizes of children aged 5 to 8. And then they found that more children in all age groups chose the just procedure than the unjust procedure. More importantly, Children in the 7-8 age group use just procedure far more often than children in the 5-6 age group. When given a choice between throwing away items and unjust procedure, older children were more likely to prefer throwing away prizes to unjust procedures than younger children [15]. Damon used dilemmas that children aged 4 to 8 years old encountered in their lives to compare their perceptions of justice and found that 4-5-year-olds could only use size as a criterion for justice; 5-6-year-olds began to associate justice with equality; 6-7-year-olds began to evaluate justice in terms of contribution; and 8-year-olds began to take into account the relatively complex needs of individuals [16]. Mills and Grant's study also found that 6-8-year-olds began to question adults' allocation decisions and were able to recognize that adults' choices might be unjust, and thus began to choose a just procedure for resource allocation, rather than allowing adults to allocate directly [17]. In relation to the developmental process of procedural justice judgements, Damon proposes a stage-based model of cognitive development, suggesting that children's level of just reasoning is highly correlated with their level of reasoning about mathematical and physical problems, and that most children's development in these two domains (justice domain and cognitive development domain) shows close synchronization [18].

5. Conclusion and outlook

In summary, both infants and adolescents have a natural inclination to seek procedural justice, even if this inclination entails a potential loss of material benefits. More importantly, the natural inclination is not a decisive cause of procedural justice, since understanding procedures requires a complex set of rational processes. In other words, the human tendency to pursue procedural justice is innate but not constant, which develops gradually as cognitive abilities mature.

Since 2000, the use of psychology to solve philosophical problems has become a very common approach and has produced many results, even in Europe and the United States where the "naturalism" or "materialism" has become a "distinguished school". It has been pointed out that "in the present case, there is no other systematic ontological position that can compete with materialism. As a result, the most typical theoretical constructions in philosophy and science are in one way or another subject to the conceptual ideas introduced by materialism." [19]. The interdisciplinary approach has also yielded a number of achievements in recent years, which demonstrate the need and feasibility of collaboration between psychology and philosophy. For example, the pioneering 'hypocrisy' experiment at Yale University proved the existence of moral hypocrisy; and the discovery of 'mirror neurons' revealed the physiological basis of compassion. Therefore, future research should give full play to the characteristics of philosophical problem awareness and the rigorous empirical basis of psychology, and then expand the scope of interdisciplinary crossover to provide solutions to some long-standing controversial issues.

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