

Empirical research in justice and dispute resolution: What justice is wanted?

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Recap from yesterday pm: JUSTICE

- What do people want from dispute resolution?
- The concept of justice in the courts, tribunals and ADR schemes
- ADR and justice theory
- Problems with justice in relation to arbitration, ADR, mediation, consumer ADR, ombudsmen, business ADR and courts.

Outline

- ◆ A justice system
- ◆ Whose view
- ◆ Some empirical indications

Justice system

- ◆ Law and the justice system
 - The legal system must uphold fairness in society;
 - Provide for access to justice and fair outcomes, the protection of rights and the rule of law.
- ◆ Informal parts of the justice system
 - Dispute resolution pathways

EU Justice Scoreboard 2016:

Whatever the model of the national justice system or the legal tradition in which it is anchored, timeliness, independence, affordability, and user-friendly access are some of the essential parameters of an effective justice system.

Fairness

Fairness has a wider meaning than ensuring just outcomes and upholding due legal process.

The concept of ‘procedural fairness’– that the process by which decisions are made needs to *feel* fair to people coming to court or ANY dispute resolution procedure.

Procedural fairness

- **Neutrality** – do citizens perceive that decisions are made in an unbiased and trustworthy manner?
- **Respect** – does the citizen feel that he was treated with dignity and respect?
- **Understanding** – do citizens understand how decisions are made and what is expected of them?
- **Voice** – has the citizen had an opportunity to be heard?

Individuals and the justice system

- When they have a problem ...
- Through the media, their friends and neighbours, ...
- as a volunteer,
- to support family and friends,
- a witness,
- to attend court,
- or to participate in shaping legislation

Expectations of the justice system

- Fast,
- cheap,
- accessible,
- personal,
- ...how does this translate within the justice system?

Type of problem

– Context matters

- What is the complaint about?
- How much does it impact on an individuals life?
- How complex / straightforward is it?

Empirical evidence – critics of the system

- Expectations of informal justice system (ombudsmen) change when people do not get the outcomes they want

Dissatisfaction with the justice system

- ◆ High levels of legal identification amongst users, and ideas about fairness that are shaped by the formal justice system, help explain dissatisfaction.
- ◆ Rather than rebuilding trust between citizens and administration, ombudsmen schemes currently lead to many users feeling alienated, as their expectations about justice are not reflected in their experiences of using ombudsman schemes.

Expectations management

- ✧ Information
- ✧ Access to justice in an ever growing and confusing set of pathways for citizens to seek redress
- ✧ More active involvement?
- ✧ ...or are we being overladed and feel an information - saturation?

ADR: solution or problem?