Ethnicity, Gender, and Preferences for Dispute Resolution Procedures*

E. Allan Lind,† Yuen J. Huo,‡ and Tom R. Tyler‡

African American, Hispanic American, Asian American, and European American students rated their procedural preferences in response to a hypothetical conflict scenario and then recalled a real dispute in which they had been involved. Subjects of all four ethnicities and of both genders preferred persuasion and negotiation to other options. There were significant ethnic and gender differences in preferences, as well as differences for the nature of the relationship and the nature of the issue, but these differences were small in comparison to the overall pattern of procedural preferences. Reports of actual procedure use also showed differences in procedure use across genders, ethnicities, and relationship type, but the differences were relatively small. Procedural fairness was the strongest predictor of both procedural preference and affect toward actual procedure use.

Implicit in most American legal analyses of traditional and alternative dispute resolution procedures is the assumption that law and legal institutions should be blind to the personal characteristics of those who come before the courts. While this universalistic approach to law is laudable in its goal of avoiding racial or

---

* The research reported here was supported by National Science Foundation grants Nos. SES-9113863 and SES-9113752 and by the American Bar Foundation. The manuscript was prepared while the first author was a Visiting Scholar at the Institute of Personality and Social Research at the University of California, Berkeley and while the second author was supported by an American Psychological Association Research Fellowship. The present study is part of a larger international study of culture and disputing, conducted by the present authors in collaboration with Dr. Kwok Leung of the Chinese University of Hong Kong and Dr. Günter Bierbrauer of the University of Osnabrück. Their work on the overall project contributed substantially to the present study. Thanks are due to Eileen Young, Pui Lau, and Annie Chen for their assistance in conducting this research. Requests for reprints should be sent to the first author at the American Bar Foundation, 750 N. Lake Shore Drive, Chicago, Illinois 60611.
† American Bar Foundation.
‡ University of California, Berkeley.
gender prejudice, it carries with it the possibility that law and legal procedures will be ill-fitted to the needs of minorities. American legal procedure relies heavily, indeed almost exclusively, on legal analyses by men of European descent. Thus, the history of American procedural law gives reason aplenty to wonder whether it is congruent with the disputing norms of African, Hispanic, or Asian Americans or with the disputing preferences of women.

Much of the debate about ethnicity and law focuses on the disputing traditions that form the backdrop of legal behavior. Anthropologists and sociologists have long argued that the way disputes are handled in a given society—and in consequence the formal law that develops from disputing traditions—is strongly conditioned by cultural factors (e.g., Felstiner, 1974; Gluckman, 1969; Gulliver, 1979; Nader, 1969; Nader & Todd, 1978). According to theories of disputing in these disciplines, preferred methods for handling disputes reflect cultural values, which are in turn determined by the social and physical environment of the society. Thus, for example, many East Asian cultures are thought to place substantial value on harmony and conflict avoidance, and people from these cultures are thought to prefer indirect or nonconfrontational ways of dealing with conflict. European Americans, on the other hand, are presumed to value fairness, because of the importance accorded that concept in British and Western European culture. European Americans are thought to be willing to use confrontational procedures if these procedures advance fairness considerations. A similar line of thinking has prompted feminist scholars to predict that women, who are generally viewed in sociological analyses as more relationship-oriented than men, will prefer less confrontational, more conciliatory procedures (e.g., Gilligan, 1979, 1982). The view that people in different backgrounds might need different legal forums and procedures represents an emerging policy position, in opposition to the traditional, universalistic approach mentioned above.

The active study of procedural preferences in social psychology began with the work of Thibaut and Walker (1975) in the early 1970s. Thibaut, Walker, and their students studied the extent to which American university students (predominantly of European descent) expressed a preference for using various arbitration, mediation, and negotiation procedures. Thibaut and Walker were mindful of the possibility of cultural variation in procedural preferences, and they conducted a number of cross-national replications of their original studies, comparing the preferences of subjects in the U.S. to those of subjects from a number of Western European nations (LaTour, Houlden, Walker, & Thibaut, 1976; Lind, Erickson, Friedland, & Dickenberger, 1978; Thibaut, Walker, LaTour, & Houlden, 1974). The cross-national studies showed only minor differences in procedural preferences, suggesting that a universalistic explanation of the psychology of procedural preference might be in order. Thibaut and Walker noted that in both the U.S. and Western Europe, procedural preferences were correlated very strongly with beliefs about the fairness of the procedure, and they argued that the primary factor that people consider in choosing a disputing procedure is procedural justice. Implicit in their argument is the idea that what it means for a procedure to be fair might vary from situation to situation, but that procedural justice judgments are always one of the most important criteria for choosing a procedure.