

The attorney's indirect informative effects on the litigant's cognition: Relations between the attorney, judge, sense of control, and acceptive attitudes

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Perceived procedural justice and attitudes toward litigation results have been shown to be mainly a result of fair treatment by judges. The role played by attorneys has not been the focus of previous research, despite the fact that they as well as judges are theoretically key legal specialists. Judges in civil justice case are thought to regulate litigants' actions, including vetoes and excessive demands, to ensure that conflicts do not become deadlocked. At the same time, litigants need attorneys to control the litigation process. In this study, two sets of survey data were combined and analyzed to investigate the effects of attorneys on litigation. The results confirm that a favorable image of attorneys leads to a more positive evaluation of judges, promotes the perception of process control, and restrains relative deprivation, suggesting that litigants assess attorneys on the basis of whether they provide adequate technical information for engaging in litigation.

Key words: attorney, legal procedures, process control, relative deprivation, procedural justice

Previous research has confirmed that the attitudes of parties concerned in public decisions are influenced by authority figures. In particular, it is known that litigants who perceive that they are fairly treated by judges in legal situations are more likely to feel procedural justice and to accept the results. Judges play a major role in determining the attitude of litigants. However, to our knowledge, the role of attorneys, which is essential in the legal system and an important interpersonal element in litigation, has not been studied in procedural justice research. Therefore, the aim of the present study was to examine the cognitive effects that attorneys have on litigants.

Process control and acceptance

Generally speaking, nobody likes lawsuits. However, people come to court when they cannot settle conflicts by themselves. Indeed, previous research on Japanese people who have taken cases to court shows that more than 90% of plaintiffs felt that litigation was only the way to resolve their dispute (Society for the Study of the Civil Procedural System, 2014). The reason disputants are unable to settle their conflicts outside of the court is because they often set high goals and tend not to compromise on their own, which can easily lead to deadlock.

Thibaut and Walker (1975) provided a theoretical explanation of legal proceedings from a social psychology point of view. According to their research, disputants contending with others are often unable to settle their conflicts because they can control the decisions; they can

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freely assert and reject their opponents' suggestions if they do not consider them adequate. Therefore, their control must be transferred to a third party to reduce excessive demands and reach an agreement.

However, disputants who hand over control to third parties do not want to lose control completely; they want to maximize the results of the legal proceedings by presenting their own evidence and arguments. Thibaut and Walker (1975) conducted an experiment to ascertain the preferences of disputants. In their experiment, the participants perceived third-party control most strongly in autocratic procedures, followed by arbitration, moot, mediation, and bargaining. By contrast, the participants had the most favorable view of arbitration, followed by moot, mediation, autocratic procedures, and bargaining. This result suggests that disputants prefer moderate third-party control. Thibaut and Walker (1975) conducted another experiment to identify which legal procedures were preferred by disputants. They found that disputants were more satisfied with verdicts achieved through adversarial procedures and perceived them to be fairer when they had been able to present their own evidence and speak freely. On the other hand, verdicts achieved through inquisitorial procedures, in which the disputants were unable to present evidence freely, were perceived as less fair. These findings indicate that disputants want to maintain as much control as possible.

Thibaut and Walker (1975) divided the control-in-decision-making process into two categories: 1) decision control, which is the direct influence over a decision, such as a veto; and 2) process control, which is the influence of processes such as communication or the presentation of evidence. Process control is needed to influence decisions indirectly. In a bargaining situation, because both disputants have decision control, they are sometimes unable to settle their conflict. In such cases, they may hand over decision control to a third party, who can restrain them and help them reach an agreement. However, because both parties hope to get as favorable a result as possible, they both try to retain process control.

What is the role of the attorney?

Thibaut and Walker (1975) presented several experiments confirming that litigants were more likely to perceive procedural justice and accept the results in adversarial compared with other procedures because of process control. Based on a real adversarial procedure, that used in the experiment conducted by Thibaut and Walker (1975) contained attorneys on the side of each litigant. Therefore, the litigants were thought to need support from attorneys to secure process control in an adversarial procedure effectively.

Considering actual Japanese civil actions, most disputants seem to entrust their cases to attorneys because untrained individuals tend to find civil law and the code of civil procedure excessively complicated. Attorneys must submit required papers and evidence, develop claims, and argue with opposing parties and their attorneys on behalf of litigants. Given that attorneys play this key role, disputants are assumed to want them to utilize their expertise by demonstrating effective process control to achieve favorable results. Actually, Ishida (2010) confirmed that litigants appreciate attorneys for the following three reasons: adequately

preparing for a lawsuit, providing rapid legal services, and giving a detailed explanation of the results.

Nevertheless, Imazai (2010) has confirmed that this very positive evaluation of attorneys is not effective for the disputants' evaluations of the subjective validity of the final decision. Some studies have shown that disputants' sense of control and impressions of the judges affect their attitudes toward the final decision, including acceptance, perceived procedural fairness, the suppression of deprivation, and satisfaction with the decision (Imazai, 2013; Imazai & Imazai, 2010; Ohbuchi, Sugawara, Teshigahara, & Imazai, 2005; Sugawara, Imazai, & Ohbuchi, 1999). These effects are considered robust in legal situations.

However, the presence of attorneys appears to affect the disputants' attitudes toward the results indirectly through their own control or perception of the judges. As Pearson's correlation coefficients are approximately 0.50 between both attorneys and judges and attorneys and litigants' control, Imazai (2010) has shown that attorney evaluations are associated with litigants' perceptions of judges and their own self-control. This result suggests that attorney evaluations might not be a major factor in disputants' views of decisions because attorneys are not responsible for judgments, but litigants could feel that the actions of attorneys enable disputants to present their claims and evidence to judges more effectively.

Limited self-interest

Thibaut and Walker's theory is referred to as the "self-interest model" (Lind & Tyler, 1988), even though people are not necessarily motivated to maximize unlimited gains at all times. It has been shown that people feel unsatisfied when they see their condition as relatively worse than that of others—a phenomenon known as "relative deprivation" (Crosby, 1982; Major, 1994; Stouffer, Suchman, DeVinney, Star, & Williams, 1949). People feel relative deprivation when they compare their present state with their own better past experiences or with other people in a better situation (Tyler, Boeckmann, Smith, & Huo, 1997). Such perceptions become factors that make people imagine better potential results in counterfactual situations. Some researchers have focused not only on time periods or other people, but also on the concept of "deservedness." Ambrose, Harland, and Kulik (1991) and Folger (1986, 1987) carried out experiments confirming that people tend to resent unfavorable results that are given in an unjustifiable situation without any explanation.

In the case of civil actions, few litigants try to gain unlimited profit; in most cases, the plaintiff simply aims to recover a loss, while the defendant wants to keep the amount of compensation they have to pay as low as possible. The closer the results to these imagined criteria, the more satisfied the litigants will be. Of course, litigants sometimes change the level of imagined results that they feel appropriate as they are not always confident of being able to estimate the level correctly. In such situations, attorneys can provide litigants with information about valid results or the fairness of the litigation proceedings; this information can help to shape their clients' attitudes toward the results.

Hypothetical model of litigant's cognitive process

As mentioned above, when litigants perceive process control, they are more likely to accept the results of litigation. This study presents a model of the cognitive process of litigants (see Figure 1). First, litigants who cannot settle conflicts on their own want a judge to act as a third party to restrain their unproductive actions while simultaneously allowing them to control some aspects of the process. Litigants who view their judges in a positive light are therefore more likely to perceive process control.

Hypothesis 1. Positive evaluation of judges promotes perceived process control.

Second, Thibaut and Walker (1975) argued that litigants who are given an opportunity to control the process are more likely to perceive justice and accept the results.

Hypothesis 2. Perceived process control promotes perceived procedural justice and acceptance of results.

Third, the present model examines two results-related variables: acceptance of results and relative deprivation. Most litigants are motivated to maximize their outcome within the range of valid rights, and dissatisfied when they imagine they could have gained a better outcome than they actually did. For these reasons, litigants who do not feel relative deprivation of outcome are more likely to accept the results. If litigants imagine better results with less controllable or fairer procedures, they will feel deprivation.

Hypothesis 3. Process control and procedural justice restrain relative deprivation.

Hypothesis 4. Restraint of relative deprivation promotes acceptance of results.

The present study also explores the informational effects associated with attorneys. As previously mentioned, it has been shown that attorneys have less impact on perceived justice and acceptance than do judges (Imazai, 2010). However, attorneys are responsible for explaining the actions of judges, the extent to which litigants can control procedures, and what constitutes reasonable results. Litigants who retain attorneys use the supportive and technical information provided by their attorneys to evaluate each aspect of the process. The broken lines in Figure 1 illustrate that litigants' impressions of their attorneys can be assumed to influence their evaluations of judges and perceived process control.

Hypothesis 5. Attorney evaluations promote perceived procedural justice and acceptance of results via evaluations of judges and perceived process control.

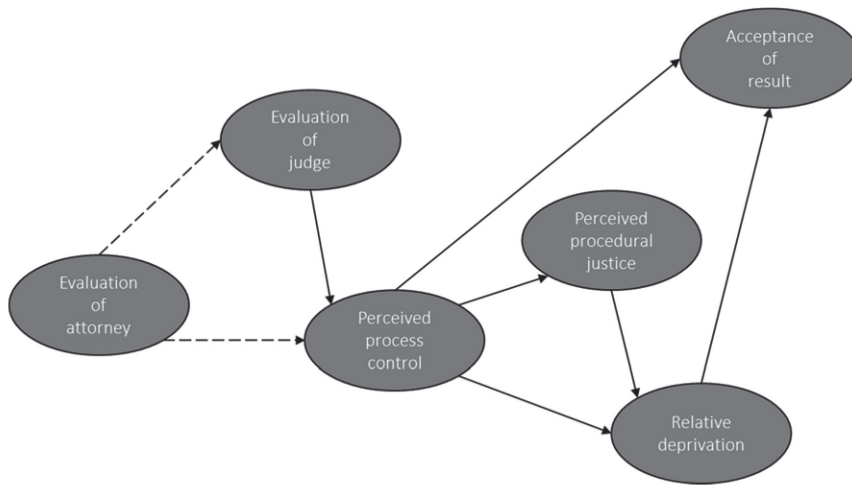


Figure 1. Hypothetical model of the attorney's effects on the litigant's attitude

Methods

Procedure and respondents

In the present study, two data sets were joined. The first data set was originally collected for a report on Japan's civil litigation survey (Society for the Study of the Civil Procedural System, 2014). That research aimed to produce fundamental data for use in designing a civil litigation system. The report investigated individuals who had been involved in litigation and already finished their first trial. To extract targeted persons, researchers carried out two-stage, unstratified probability-proportional-to-size sampling. District courts were elected repeatedly by 300 lots and allocated a population number, which was the number of hits multiplied by 20. Of the 6,000 people contacted, 2,406 consented to receive a questionnaire, and 770 responded. The questionnaire asked each participant about the sort of case he or she was involved in, the disputed amount, time period, conflict process, motivation, court procedures, his or her impressions of the judge and attorneys, his or her assessment of the results, and his or her evaluation of the Japanese legal system overall. The survey was carried out between August and November 2011. These data were deposited in the Center for Social Research and the Data Archives of The University of Tokyo's Institute of Social Science for all researchers to use.

The second data set was gathered by the same research group between August and November 2016 (Society for the Study of the Civil Procedural System, 2018). It included the same questions and was collected using the same procedures; in this case, 5,000 people were contacted, of whom, 3,146 agreed to receive the questionnaire, and 910 responded.

Multivariate analysis of variance was used to compare six variables (these are detailed later). Although the mean difference in relative deprivation between the two data sets was significant (2011: 2.51; 2016: 2.68; $F(1, 1164) = 7.89$; $p = .005$), the *Box's M* statistic (23.298)

was not ($p = .335$); therefore, it was considered practical to combine the two data sets.

After merging the two data sets, they were checked for inconsistent answers; as 43 respondents answered questions about their impressions of attorneys without having retained an attorney, these responses were excluded from analysis. Therefore, the final number of cases analyzed was 1,637, of whom, 1,325 had retained attorneys and 312 had not. Following path analysis used the 1,325 respondents who retained attorneys.

Scales and questions

The scales used in the present study are presented in Table 1: evaluation of the attorney, evaluation of the judge, process control, relative deprivation, and acceptance of results. All questions were answered using a five-point scale ranging from “not at all” (1) to “completely” (5).

Evaluation of the attorney. The attorney evaluation scale was composed of 18 questions about the attorney’s job performance relating to his or her attitude toward litigants, support of litigants, and ability to explain the litigation process (Cronbach’s $\alpha = .98$). Another question in the original questionnaire asking whether the attorney was domineering was excluded because it reduced the α -value.

Evaluation of the judge. The judge evaluation scale was composed of 13 questions about the judge’s job performance and attitude toward litigants (Cronbach’s $\alpha = .96$). As in the case of attorneys, the question about domineering behavior was excluded.

Perceived process control. The process control scale was composed of three questions about the extent to which respondents participated in the procedure (Cronbach’s $\alpha = .81$).

Perceived procedural justice. Only one direct question was asked about perceived procedural justice.

Relative deprivation. The relative deprivation scale was composed of four questions probing whether the respondents felt that they could have obtained a more favorable outcome if they had faced trial in other way (Cronbach’s $\alpha = .87$).

Acceptance of results. The acceptance scale was composed of five questions ascertaining the extent to which respondents complied with the outcome and considered it valid (Cronbach’s $\alpha = .97$).

Results

Table 1 shows the means, standard deviations, and correlations for each variable. The mean values of the two groups (those who retained attorneys and those who did not) are shown separately. A comparison of the mean values of these two groups confirms that the respondents with attorneys gave the judge a higher rating ($F(1, 1563) = 18.93; p = .00$) and perceived higher levels of process control ($F(1, 1550) = 4.18; p = .041$) than did respondents without. The correlation value was calculated using the data from the group with attorneys.

Table 1 Means, standard deviations, and correlations for each variable

	<i>Mean (SD)</i>		2	3	4	5	6
	Not retained	Retained					
1 Attorney	----	4.17 (0.89)	.32**	.45**	.36**	-.53**	.46**
2 Judge	3.91 (1.33)	4.30 (1.37)**		.58**	.70**	-.37**	.54**
3 Process control	3.75 (1.38)	3.91 (1.18)*			.59**	-.46**	.52**
4 Procedural justice	3.88 (1.58)	3.89 (1.57)				-.40**	.57**
5 Relative deprivation	2.61 (1.13)	2.59 (1.07)					-.62**
6 Acceptance	3.31 (1.40)	3.33 (1.38)					

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

As unexpected relationships were possible, a saturated model was analyzed using a path analysis (Amos 22) to confirm the way that antecedent variables were assumed to influence not only specific variables in the theoretical model, but also all subsequent variables directly ($\chi^2(0, 21) = 157.338; p = .000; CFI = 1.00$). This analysis revealed that the coefficient between evaluation of the judge and relative deprivation was not significant (standardized $\beta = -.07; p = .051$); therefore, this was removed from the model. When the modified path model was analyzed, the fit indices showed sufficient value ($\chi^2(1, 21) = 3.839; p = .050; CFI = .999; RMSEA = .046$). Figure 2 shows the following: a positive evaluation of the judge promoted perceived process control and procedural justice; perceived process control promoted perceived procedural justice, slightly promoted acceptance of results and reduced relative deprivation; perceived procedural justice restrained relative deprivation and promoted acceptance of results; and relative deprivation diminished acceptance of results. Table 2 shows the standardized coefficients between the mediated and direct effects using Amos. Looking at the coefficients regarding Hypothesis 5, evaluation of attorney was confirmed to promote perceived procedural justice and acceptance of results more indirectly than directly.

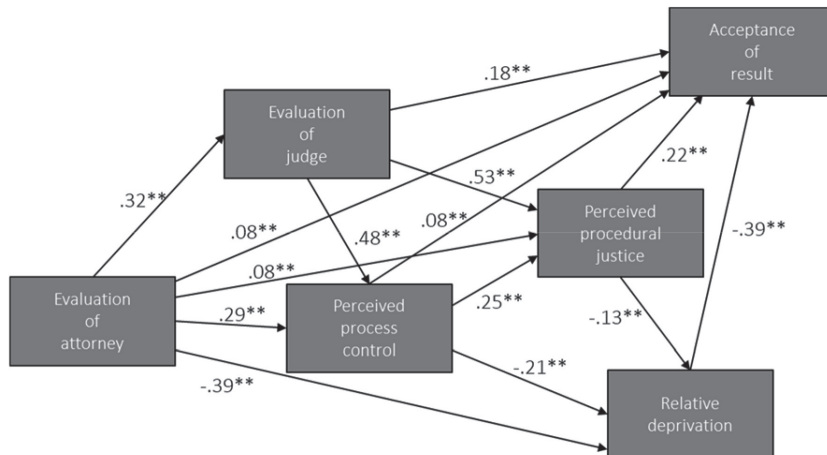


Figure 2. Results of the analysis using Amos

Table 2 Comparison of mediated and direct effects

	Evaluation of attorney		Evaluation of judge		Perceived process control		Perceived procedural justice	
	Direct	Mediated	Direct	Mediated	Direct	Mediated	Direct	Mediated
Perceived process control	.29	.16						
Perceived procedural justice	.08	.29	.53	.12				
Relative deprivation	-.39	-.14	.00	-.19	-.21	-.03		
Acceptance of result	.08	.38	.18	.25	.08	.15	.22	.05

Discussion

The results of the present study reveal the basic cognitive process of litigants. As a positive evaluation of the judge has been shown to influence perceived procedural justice, process control, and acceptance of results, the image of the judge can be assumed to be closely associated with the litigation process. Especially, the result that a positive image of the judge promoted the litigant's sense of control supports Hypothesis 1, in which litigants evaluate judges from the viewpoint of process control. Moreover, a positive evaluation of the judge also affected procedural justice and acceptance of results, suggesting that litigants form their final attitudes of litigation based widely on their perception of the judge. In addition, perceived process control was shown to promote perceived procedural justice and simultaneously to restrain relative deprivation. These results suggest that sufficient process control, including the ability to make assertions and present evidence, makes people perceive procedural justice and feel that they have gained the best possible outcome. However, perceived process control was not found to have a strong effect on acceptance of results. Therefore, Hypothesis 2, in which perceived process control promotes both procedural justice and acceptance of results, was partially supported; however, process control was confirmed to affect acceptance of results more indirectly than directly. As perceived process control was confirmed to be more strongly associated with relative deprivation than with acceptance of results, process control would not affect the litigant's final attitude directly, but would give them the image of an unchangeable result. Third, since relative deprivation has been shown to inhibit acceptance of results and to be restrained by both process control and procedural justice, Hypotheses 3 and 4 were supported. In other words, the harder it is for a litigant to imagine that the result could have been better, the easier it is to persuade the litigant that the result was appropriate because of the process. Furthermore, procedural justice was found to promote acceptance of results directly. As insisted by Lind and Tyler (1988), procedural justice itself is a value for socialized people who have come to obey their social system; thus, procedural justice would not only persuade litigants that there is no possibility to gain a better result, but also change their attitudes directly.

In addition to revealing the litigants' basic cognitive processes, this study also revealed how they are influenced by attorneys. A positive evaluation of the attorney has been shown to

promote a positive evaluation of the judge and perceived process control, and to reduce relative deprivation, moreover, its limited effects on perceived procedural justice and acceptance of results. This finding implies that the attorneys do not influence assessments in the later stages of the cognitive process, such as the results or procedural justice. However, since its mediated effect was confirmed, attorneys would influence procedural justice and acceptance of results indirectly; these results could be thought to support Hypothesis 5. Attorneys could influence litigants' final attitudes indirectly by sharing technical details, explaining how judges make decisions, telling litigants how to behave during litigation, and discussing reasonable outcomes. Considering the comparison of means in the present study, it is clear that litigants who have retained attorneys have more appreciation for their judges and process control than those who have not because attorneys indirectly help them feel more satisfied with the litigation process.

Furthermore, even though it was not discussed theoretically in the present study, the effects of a positive evaluation of the judge on perceived procedural justice were clearly confirmed. Some studies have noted a connection between authority and procedural justice (e.g., Barling & Phillips, 1992; Bies & Moag, 1986; Moorman, 1991; Shapiro & Brett, 1993; Tyler & Lind, 1992). Imazai (2016) reviewed studies that analyzed the effect of authority (Ambrose & Schminke, 2001; Colquitt, Greenberg, & Scott, 2005; Tyler & Blader, 2003) and confirmed that disputants who are interested in the conflicts strongly are much more likely to receive adequate explanations from judges, and find it easier to perceive procedural justice. Considering that attorneys affect the perception of judges, such explanations from judges could be considered effective if attorneys help their litigants fully understand them.

Based on the above results, attorneys can be considered to have an informational support function that differs from the role of judges, who must manage the litigation and make decisions from a neutral standpoint. The mean attorney evaluation was relatively high (positive), suggesting that most litigants trust their attorneys to be "on their side." They ask their attorneys how they should act to control the process, how to make valid assertions, and how to reach a common "point of compromise." By explaining the process of litigation, attorneys help litigants understand the intention or vision of judges more easily. Attorneys' informational support therefore makes litigants more likely to consent to the results indirectly, in contrast to a judge's actions, which directly influence perceived procedural justice and acceptance of results. For these reasons, attorneys have the effect of improving the quality of litigation for litigants subjectively.

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 Appendix Scales and questions used in the present study

Evaluation of the attorney

Do you think that your attorney...

Tried to ensure that the litigation process progressed in the appropriate way?

Tried to ensure that the litigation process progressed speedily?

Spent enough time listening to your side of the story?

Dedicated himself or herself to representing you?

Was a trustworthy person?

Had a good understanding of your approach and values, apart from your opinion of his or her interpretation of the law?

Was polite to you?

Had sufficient knowledge to represent you, even in areas other than the law?

Had properly prepared to represent you?

Had a thorough understanding of all the facts and circumstances surrounding the case?

Adequately explained the prospects for expediting the litigation process?

Adequately explained the factual and legal issues in the case?

Explained the judgment or settlement details in a way you could understand?

Adequately communicated your arguments and evidence to the judge?

Had adequate trial skills, including in negotiation and witness examination?

Considered resolutions that would be good for all parties involved, including the other side?

Had an outstanding level of legal expertise?

Paid adequate attention to your views on progressing the proceedings or resolving the case?

Evaluation of the judge

The judge spoke in a way that was easy to understand.

The judge fully understood the points at issue.

The judge asked enough questions to fully understand the issue.

The judge gave sufficient instructions, including what materials to prepare by the next hearing date.

Do you think that the judge...

Considered the litigation process from a neutral standpoint?

Listened to your side of the story?

Was a trustworthy person?

Had a good understanding of your approach and values, apart from your opinion of his or her interpretation of the law?

Was polite to you?

Had a good understanding of your approach and values, apart from your opinion of his or her interpretation of the law?

Had prepared adequately to try the case?

Had an outstanding level of legal expertise?

Had a thorough understanding of all the facts and circumstances surrounding the case?

Perceived process control

You were able to make the case for your side fully during the hearings.

You were able to present the evidence for your side fully during the hearings.

The entire litigation process was easy to understand.

Perceived procedural justice

Only one direct question was asked about perceived procedural justice.

Relative deprivation

You could have obtained a more favorable outcome if you had had a different attorney. Alternatively, if you did not have an attorney, you might have obtained a more favorable outcome if you had had an attorney.

You might have been able to obtain a more favorable outcome if you had known more about how to argue your case.

You might have been able to obtain a more favorable outcome if you had known more about the law and the litigation system.

Acceptance of results

The outcome of the litigation process was fair.

The litigation process was consistent with your approach and values, setting aside your opinion of the law.

The outcome of the litigation process was consistent with legislative provisions.

You were able to accept the outcome of the litigation process.

The outcome of the litigation process made sense to you.

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