

BOOK REVIEW

***The slow violence of immigration court: Procedural justice on trial.* By Maya Pagni Barak. New York: New York University Press, 2023. 240 pp. \$30.00 paperback.**

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Procedural justice theory maintains that people who perceive a legal process to be fair are more likely to be satisfied with a legal encounter and to obey the law (Thibaut and Walker 1975). Unfortunately, the utility of procedural justice theory is stymied by the fact that most studies examine the United States and other Western countries in a manner that fails to assess how perceptions of fairness may vary in relation to gender, race, socioeconomic status, age, immigration status, culture, geography or even the type of legal encounter itself (e.g., a traffic stop or a court hearing). Barak's *The Slow Violence of Immigration Court* joins a nascent but growing body of scholarship that addresses the limitations of prior studies by adopting a more holistic and intersectional understanding of procedural justice.

Barak scrutinizes immigration attorneys' and immigrants' views of justice to address three overarching research questions. First, how do immigrants' perceptions of immigration court relate to compliance (or lack thereof) with deportation orders? Second, do immigrants' views differ from attorneys' views, and if so, why? Third, and perhaps most saliently, "what is the value of procedural justice in the face of a substantively unjust immigration system?" (13). Barak draws on two bodies of sociolegal scholarship: procedural justice (and the related but distinct concepts of distributive justice, substantive justice and outcome satisfaction) and legal consciousness (in conjunction with legal socialization).

From 2014 to 2016, Barak conducted 37 interviews with immigration attorneys and immigrants from El Salvador, Guatemala and Honduras, using a mixture of convenience and snowball sampling. She also took field notes of two East Coast immigration courts, one with an above-average deportation rate and the other with a below-average deportation rate. Finally, she volunteered at immigrants' rights organizations. Barak acknowledges the limitations of her sampling strategies but notes that her goal was not "to discover a one-size-fits all understanding of procedural justice" but "to do just the opposite" (10).

Barak found that interviewees' assessments of fairness were based on their understanding and expectations of the law. Drawing on the concepts of legal socialization,

legal consciousness and positionality, Barak states that immigrant interviewees were more likely to portray immigration courts as procedurally fair than attorney interviewees. Nevertheless, immigrant interviewees' favorable evaluations were insufficient to ensure their compliance with deportation orders. In part, this was due to distributive injustice; immigrant interviewees resented that immigrants with criminal records were sometimes granted a stay of removal, while immigrants without criminal records were sometimes deported.

Ultimately, however, it is substantive injustice within the immigration system writ large that best explains why immigrant interviewees reject deportation orders. As Barak asserts, immigrant interviewees "will not exchange substantive fairness for procedural niceties" (147). Given this reality, Barak cautions that the procedural reforms of immigration court, while well-meaning, may do more harm than good. They "afford an air of fairness and legitimacy" without engendering justice (13). If the law is inherently unfair, then appointing counsel for indigent immigrants may not prevent deportation. More disconcertingly, such reforms mask the "slow violence" of immigration court (153).

Barak's book is organized into an introduction, six chapters, a conclusion and an epilogue. The introduction orients readers to the theoretical paradox that Barak confronts: if immigrant interviewees perceive immigration courts as fair, why do they eschew compliance with deportation orders? This goes against procedural justice theory, which maintains that perceived fairness is associated with obedience to the law. Chapter 1 provides a succinct account of Central American migration to the United States and the historical precursors of immigration courts. It also discusses the concepts of procedural justice, distributive justice, substantive justice and outcome satisfaction. Chapter 2 explains that many attorney interviewees expressed concerns over procedural fairness due to technical difficulties associated with tele- and videoconferencing, combined with limited interpretation for non-English proficient immigrants. Attorney interviewees also remarked on the challenges that immigrants, particularly those who are detained, encounter in securing competent legal counsel. Chapter 3 discusses the legal socialization of immigrants and explains why legal storytelling is crucial to the development of a unique immigrant legal consciousness.

Chapter 4 examines immigrant interviewees' positive assessments of immigration court fairness but notes that these favorable views are insufficient for compliance with deportation orders. This is primarily due to substantive injustice, though interviewees are also concerned with distributive justice. Chapter 5 explains that immigrant interviewees granted legitimacy to the United States because of its perceived ability to be "tough on crime," not because of its procedural fairness. Chapter 6 integrates the theoretical constructs from prior chapters and connects legal consciousness to procedural justice. The conclusion and epilogue emphasize the dangers of "criminal justice creep," which Barak describes as "a gentler form of crimmigration" (13) that perpetuates the "slow death" of immigration court (156).

Barak deftly weaves together interviewees' accounts with theoretical constructs, a challenging feat that makes her book accessible to both lay and academic audiences. This strength is also the book's main weakness, however. While Barak's storytelling combined with theory engenders a fluid reading experience, her mixture of

layperson-friendly vocabulary with academic concepts partially obscures her main arguments. For example, Barak is inconsistent in her terminology, at times favoring concise adjectives (e.g., “just”) over their more academic equivalents (e.g., “substantive justice”). While scholars may quickly surmise that some terms can be used interchangeably (e.g., “substantive fairness,” “substantive justice” and “the justness of the law”), laypeople may not make this connection. This is important, because Barak contends that immigrant interviewees’ noncompliance with deportation orders is premised on the substantive injustice of immigration law.

Continuing in this vein, I would have liked Barak to further elaborate on what a substantively just immigration system might entail. Barak does address this from Chapter 5 onward, but the discussion lacks nuance. Certainly, substantive justice is likely to be defined differently by different people; nonetheless, Barak gives relatively short shrift to this concept given the central role it plays in her argument. That said, a book cannot explore all avenues of inquiry, and Barak provides researchers with an excellent starting point for future research in this area.

A key strength of this book is that Barak identifies two areas where mainstream conceptions of procedural justice are lacking: time and English language proficiency. Regarding the former, Barak notes that many immigrant interviewees expressed frustration with court backlogs and rescheduled hearings. Regarding the latter, Barak points out that English language proficiency is generally unaccounted for in procedural justice studies, despite its crucial role for participation in legal proceedings. I agree with Barak that additional scholarly inquiry is merited in these areas.

Another strength is Barak’s qualitative methodology and her triangulation of data across three sources: interviews, field notes and first-hand experiences. However, Barak’s discussion of her methods is limited to a few pages in her introduction and an appendix that contains her interview questions. I would have appreciated additional information about each of these methods. For example, Barak explains why she focused on El Salvador, Guatemala and Honduras but not why she excluded Mexico, which generated the highest number of immigrant arrivals to the United States at the time of her study. Regarding field notes, Barak discloses that she observed two East Coast immigration courts, but she does not share her total observation hours, or whether they were equally spread across both courts. Finally, Barak’s volunteer work at an immigrant rights organization likely influenced her research beyond facilitating recruitment of interviewees, and I would have enjoyed learning more about how this added another dimension to her study.

In my estimation, Barak provides a much-needed disruption to dominant procedural justice scholarship by pushing it in a more holistic and intersectional direction. She delves into academic theories in an accessible manner, while simultaneously centering the voices of those who are most impacted by the United States’ immigration courts. Barak provides a significant contribution to sociolegal scholarship, and her evocative writing forces both general and academic audiences to pull back the façade of procedural fairness and lay bare unjust laws and policies. Having thus unsettled her readers, Barak tasks them with thinking about the weaponization of procedural justice and imagining what a more substantively just immigration system might entail. Lest we grow complacent in this task, Barak exhorts us to remember the immigrant voices that fill her book. As Barak contends, a “radical reimagining” of procedural justice is more

than necessary: it is demanded by those who are subjected to the “slow violence” of immigration court (6).

Reference

Thibaut, John W. and Laurens Walker. 1975. *Procedural Justice: A Psychological Analysis*. New York, NY: L. Erlbaum Associates.

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