

Common Law S4 Ep 4: Tom Tyler Episode Transcript

[THEME MUSIC IN, THEN UNDER]

Risa Goluboff: On this episode of Common Law, procedural justice with Yale Law professor Tom Tyler.

Tom Tyler: Whether people think the law is legitimate is AS important as whether they think they'll be caught and punished in determining whether to follow the law in everyday life.

[THEME MUSIC UP, THEN UNDER AND OUT]

Risa Goluboff: Welcome back to Common Law, a podcast of the University of Virginia School of Law. I'm Risa Goluboff, the dean. If you've been listening to the past few episodes, you know we're trying something new this season. We've assembled four guest co-hosts from my faculty to help steer our conversation. Each of them has their own research interests – from corporate contracts to the intersection of privacy and technology. And each is bringing their expertise to the table – or the mic, as it were. That's why we're calling this season Co-Counsel. Today, I welcome our fourth co-host, UVA law professor Greg Mitchell. Greg is an expert in civil litigation and law and psychology, and his scholarship focuses on legal judgment and decision-making, the psychology of justice, and the application of social science to legal theory and policy. Welcome to the show, Greg.

Greg Mitchell: Thanks for having me, Risa. I'm very happy to be here.

Risa Goluboff: It's so great to have you here. I know you got both your J.D. and your Ph.D. in psychology from Berkeley. So what drew you to pursue both degrees?

Greg Mitchell: Well, the short answer is I began psychology grad school planning to study the psychology of nuclear deterrence, and then the Soviet Union collapsed. So I needed a course correction. And honestly, on a fluke, on practically the last day that I could apply to law school, I applied only to the law school at Berkeley. And the plan initially was simply to add law school to supplement my psychological research,

which was turning towards the psychology of law and justice. Then I got into law school and loved the law.

Risa Goluboff: You are such a beloved teacher here at UVA, and you're a major figure in the field. So I am really glad that you agreed to be my co-counsel for these sessions.

Greg Mitchell: Well, thanks. I'm excited to be here to get to talk to Tom Tyler. Tom joined Berkeley in 1990, right after I had joined the program at grad school. Tom turned out to be one of the nicest people in the world, which was great since he was on my dissertation committee, and it's very good to have nice people on your dissertation committee, as you know, Risa.

Risa Goluboff: Absolutely.

Greg Mitchell: Tom is now a professor of law and psychology at the Yale Law School and a founding director of the Justice Collaboratory at Yale. The Justice Collaboratory aims to use science to help reform the criminal justice system. Tom's recent work has been exploring how procedural justice theory can be used to build trust between police departments and the communities that they serve.

Risa Goluboff: Well, I am very excited to meet him after that introduction. We will be right back with Yale law professor Tom Tyler.

[THEME MUSIC UP, THEN UNDER AND OUT]

Greg Mitchell: Tom, thank you for joining us to talk about your work, we're delighted to have you.

Tom Tyler: Well, let me just start out by saying that it is really an honor to be at the University of Virginia to do this because, in truth, the core ideas of procedural justice come out of a really exciting collaboration between John Thibaut, who was a psychologist at North Carolina, and Laurens Walker, who was a law professor at Virginia.

Risa Goluboff: Yes, that's right.

Tom Tyler: Greg and I are psychologists – and this illustrates how productive cooperation between psychologists and law professors can be.

[Laughing]

Greg Mitchell: Tom, could you give us a summary of your theory of procedural justice and, you know, what are its components and why do you think it matters?

Tom Tyler: The key question to me is: Why would people accept decisions made by legal authorities? It turns out that it's very important to them to feel that the conflict — the dispute — was resolved through a fair procedure, that the police officer or judge who sentenced them or decided about their case followed fair procedures. So through our research, we've come to realize that if you want people to accept legal authority, you need to focus on creating procedures that they will experience as being fair. And again, just to note that this is the central insight of John Thibaut and Laurens Walker, which I have basically picked up on and tried to push everywhere I can.

Greg Mitchell: Their view was that the best system is one that gives the maximum process control to the litigants while giving decision control to a third party. And I think that they thought that that would lead to distributive justice and satisfaction with the outcomes.

Tom Tyler: Well, it's interesting, Greg, that you quite correctly lay out their theory because I think if they were here with us today, they might not recognize the field of procedural justice that they've created because the conception of fair process has expanded and changed so much in the almost 50 years since they wrote their book. And in particular, the whole idea of relational concerns: treatment with respect, treatment with dignity, trusting the intentions, thinking that the authority is benevolent and sincere, that they're trying to do the right thing. Those are NOT elements that the original work recognized or thought were important. So, you know, as a psychologist, I just would emphasize that this is not a normative model that I'm putting down on people. I'm actually just telling you what interviews with people show that these are the things that affect what they do.

Greg Mitchell: Yeah. What do you consider a fair procedure in your theory?

Tom Tyler: So in the book that I think I'm the best known for "Why People Obey the Law," the core argument is that whether people think the law is legitimate is AS important as whether they think they'll be

caught and punished in determining whether to follow the law in everyday life. And so that is the core argument. Then the second argument is that we really want more than compliance. We want acceptance. People will follow the rules if there's a police officer standing there in front of them, but when the officer leaves, we want them to continue to follow the rules and that really comes more from legitimacy.

Risa Goluboff: The big thing we want is acceptance rather than compliance. That's the more important one.

Tom Tyler: Yes. And you know, the thing that I would say more thoughtfully now than when I wrote that book a long time ago is: If you think about a sanction framework, the problem is that it's really about suppression. For example, if we're willing to continue to spend an enormous amount of money on a police force to surveil people, then we have an ongoing system of authority that produces compliance. But if we would try to shift over to a system based upon acceptance through legitimacy, we could imagine that over time, the need for that police force would lessen and we could spend the money on something else. And so I think a big benefit of a legitimacy-based approach is that we don't have to spend as much money trying to surveil and sanction people.

Greg Mitchell: I was once on a panel with Harold Spaeth who Tom will know is a leading political science scholar on the Supreme Court and what shapes Supreme Court decisions, and also what shapes acceptance of Supreme Court decisions. And I was pushing the procedural justice and legitimacy argument and Harold was having NONE of it. So you see pushback to notions of legitimacy from people who are proponents of an economic analysis of the law, and think that consequences are what matters and particularly, what does this do for me or for my groups. So the whole idea that procedures and the rule of law matters that much is, it's a hard sell in some areas of the academy, I think.

Tom Tyler: Well, absolutely. The reason I was drawn into this work in the first place was that judges were issuing orders and people were not following them. And I think that makes a nice distinction between a normative and an empirical analysis.

Greg Mitchell: Right. And I think you're alluding to not only the court orders, but also some of your early work was looking at acceptance of the police ...

Tom Tyler: Yes.

Greg Mitchell: ... and looking at the role of perceptions of procedural fairness within the African-American community and how that affected their willingness to comply with, or to cooperate with the police and obey the laws that were on the books at the time. I mean, isn't that true that you've been on this topic for a long time?

Tom Tyler: Absolutely. I remember reading Thibaut and Walker's book "Procedural Justice" when I was in graduate school and being very effected by it, because I thought it answered a question that I had been confused about, which is how you could get people to accept the decisions of authorities. So ever since then, really ever since I read that book, I have been pushing this point of view.

Greg Mitchell: And so you've continued that work and I think you've recently even been doing some work on how you might incorporate notions of procedural justice into the training of police. Is that correct?

Tom Tyler: Yes. So one of the things I'm very excited about is that working with the Chicago police, we developed a training program on procedural justice, like three 8-hour days for police officers. We were able to train a large number of police officers in Chicago. And we were able to show that the training reduced the use of force out in the community.

Risa Goluboff: Can you say a little bit more about the substance of the training? I take it, you know, that the training includes the police operating in ways that promote procedural justice and therefore increase legitimacy and trust. How do you do that? What is the nature of the training?

Tom Tyler: It was very challenging for me, as an academic who does research, to go from theories of procedural justice, to here's all these police officers, what are you going to say to them? And I think this is a problem that we have all faced as we've tried to take our ideas out into the field. If you want to train people, you have to have, like, something to

say to them that they're going to be able to understand, and that they would actually believe and buy into.

Risa Goluboff: That they could then operationalize, right?

Tom Tyler: That's a really good point because the typical thing that they ask is well, like, what do you want me to do? So when I get out of my police car, what are you telling me I should do? Don't give me theory. So what we did that worked really well is we worked with the trainers at the Chicago training academy, who train the officers all the time, and they converted these abstract ideas into a training program that had a number of features, one of which was hands-on exercises, lots of short videos of police-citizen interactions. But I think two things that were really helpful, one is that they tried to get the officers to think about what upset them about the community, and then to think about what upset the community about them. And to realize that both groups were really talking about lack of respect. I'm not listened to, not treated respectfully, I don't trust the motives of my superiors or the police. So, establishing a common ground.

Risa Goluboff: Sure.

Tom Tyler: One of the things that was a really good metaphor that developed is the idea of a community trust bank. So the officers could relate to the idea: In this last interaction, did you contribute to the community trust bank or did you make a withdrawal from the trust bank? And I'm very proud of the fact that we insisted on an evaluation so I can confidently say to police chiefs, we have evidence that this training will work.

Risa Goluboff: While you were doing this work with the Chicago police, did you learn anything that surprised you?

Tom Tyler: One thing that I didn't anticipate, that's proven to be very important: when we interviewed the officers after the training, the predominant thing that they said to us is this is all great, but none of these things that you're telling me I should do when I go out into the community ever occur in my police department. I'm not treated fairly by my sergeants or by my chief or by my superiors. So there's a whole separate literature that has developed about the procedural justice WITHIN police departments. And that literature has been also very powerful because it's shown that if you make the police department

more procedurally just for the officers, that they change their behavior out in the community, and that's separate from training. So if people experience procedural justice, they come to realize it's a better way to approach people and they just do it.

Risa Goluboff: You mention in one of your articles that when the police perceive that members of a community think that they're racist, that there are often more violent episodes and incidents, and I'm curious what the mechanism is there that leads to that.

Tom Tyler: Think about it if you are a police officer and you step out of your car into some situation where you think you need to manage that situation. One way you could manage that situation is you could engage in respectful discussion with the person. You could listen to them. You could explain yourself. If you are afraid that the person doesn't trust you and they won't be amenable to such a thing, or they might even see it as weakness, then what's your go-to response? Force. I'm going to control this person, control this situation, I'm going to dominate through the threat or use of force. I've got a gun, I've got a taser, I've got a club. And so, I think you should see it as a response to feeling like you have no other mechanisms through which to actually exercise your authority. And that's why I think it's really important for us to try to work on trust in the community, so that officers are more imagining and hopefully correctly thinking that when they step into a community, there IS room for them to de-escalate, to listen, you know, to calm things down. That it's not a threat to their safety or their ability to get something done in a situation to approach it from a lower key.

Greg Mitchell: I know Chris Winship, a sociologist at Harvard, and some other scholars are looking at the role of different approaches to the use of force in incidents of unnecessary police violence.

Tom Tyler: Exactly.

Greg Mitchell: Some of the work is suggesting that police departments who focus on de-escalation strategies, trying to train their officers that your role here is to de-escalate, versus departments that are training their officers that your role is to come in and create order, take control of the situation. That latter approach, the order control, tends to be much more associated with acts of violence, because of course it's much more like a military model, right? We're coming in and if you don't obey my instructions, that gives me reason to use force against you.

Tom Tyler: I completely agree with what you said. You know, we have been pushing like a whole set of ideas and I'm not myself so proprietary that I think you have to call everything "procedural justice." I think there's de-escalation training, there's conflict management, there's a lot of different approaches, all of which have the common feature that you described: that you try to encourage officers to lower the level of tension. Like, my job is to manage this conflict, not enforce rules. So yes, I think that's absolutely true.

Greg Mitchell: Right.

Tom Tyler: You know, I'm a psychologist, you're a psychologist, so of course we think about things from a psychological point of view, but I do think it's important that a lot of the really good ideas that are coming out now are not really about psychology, but they're about what you train officers to do in terms of strategy.

Greg Mitchell: Exactly.

Tom Tyler: One approach that's used that Phil Goff actually developed is: if police officers are pursuing someone, many of the incidents of use of force occur when they catch them, because adrenaline is very high and so on. And so they have a new policy in Las Vegas that the officers, when they catch someone, unless there's an immediate threat to life, just wait. And some other officer shows up and that officer actually puts hands on the suspect because they're not involved in this adrenaline rush.

Risa Goluboff: I'm wondering what you see as the relationship between interventions that you've been making in your work and historically ideas about say, community policing. Is there tension between those? How do you think about the relationship between a fairly long and I think -- a mixed result maybe -- on the use of community policing, how that fits into the work that you do?

Tom Tyler: I don't think there's any question, but that criminologists have a very mixed view of the success of community policing. And I would say that really comes because there's never been any clear model of what community policing involved or how it would be done.

Risa Goluboff: Right. And I think the definition of what community policing is has changed in various contexts over time.

Tom Tyler: I definitely think that an implication of the work I do is that more attention to community policing is a really good idea. And that's something I push now a lot. And we have research that shows that when the police are trusted, they can play an important role in assisting communities to address their issues of safety and, and also their issues of economic and social development. So the key is for the police to focus on being trusted actors in their community. And, you know, when you go back to this discussion of community policing in the past, I think it's been very much a secondary concern of the police to authentically build a relationship with the community.

Greg Mitchell: This, uh, I think is a good segue to a question from your nemesis, Fred Schauer.

Tom Tyler: Is he here? I didn't see him.

(Laughing)

Greg Mitchell: I told him we would be talking to you. And he said, well, I would love to ask Tom this: Fred said he would be genuinely interested to have Tom's take on obedience to the law by police officers and by public officials, more generally.

Tom Tyler: We have had a lot of corruption problems with the police, and also just kind of what you might call insubordination or rogue behavior. I think that the underlying reason for a lot of that is that the authorities have the impression that they're evaluated by the public in terms of their outcomes. So like kind of the "Dirty Harry" model, like, yeah, I broke the law, but I caught the guy. And what I think is very clear from the research is that is not how people evaluate the police. So that the police need to understand that they're actually hurting themselves when do those things.

Greg Mitchell: Right.

Tom Tyler: The crime rate in America today is about 25% what it was in 1980, and trust in the police has not gone up at all. I mean, actually it's gone down. So success in controlling crime is not leading the public to trust the police. So I think it's a bad model that they're operating on. I don't know. What do you think? Would Fred go along with that?

Greg Mitchell: Well, I think he, I think he well might, in fact.

Tom Tyler: Okay.

Greg Mitchell: I think your answer would be acceptable, or consistent with Fred's views because it's an incentive story.

Tom Tyler: Right.

Greg Mitchell: And I think that to some extent the law and the governments are responsible for putting in place perverse incentives, such as tying budgets to clearance rates. So, you know, the more crime there is in your district, the more resources you're going to get. And so in some ways it's perhaps a rational response by the police departments. What gets measured gets done. Right? And so how do we shift from that model? Because of course the public does care about the levels of crime as well. I don't know. I mean, it's, what would the metrics be that you think would better align public interest and the police interest?

Tom Tyler: Well, I would argue and I actually have argued that what we need to do is we need to measure trust in the police as frequently as we measure the crime rate. You know, I think you're absolutely right that the police want a metric of success and right now the one metric that they have is the crime rate. And so of course if you want to focus on whether you're doing a good job, that's a good way to do it, but we can also measure the way the police are understood in their communities. We can do periodic community surveys. We can do user surveys. Like there are a number of surveys where you just got stopped by the police, we ask you to evaluate it. And so, I'm definitely advocating those. And of course, there's a whole discussion of who becomes a police officer, and that's very important right now because there's a generational shift in many police departments. We need to hire people that have a broader range of skills than just being good with firearms. We have this pipeline from the military to the police. Not to knock soldiers, but the point is of people whose training is in firearms and use of force. So one big reform effort that's being pushed is hiring officers that have a college degree because we associate that education with more openness to diversity, openness to lack of confrontation when you deal with people. So there are things we could do to try to change that culture, but I do think you've characterized it nicely.

Risa Goluboff: So thinking about outcomes in a different sense, I'm curious about trust of the police and sense of the legitimacy of the system as a whole. A lot of your work, I think, focuses on kind of

quotidian everyday interactions and what those look like, but we've had lots of recent, very high-profile incidents, right? And you can think about those extra-legally, thinking about George Floyd and police violence, but you can also think about them within the system. So just recently we saw Ahmaud Arbery, that case, and the Kyle Rittenhouse case, and it seems like in so many of these cases, each one is seen as a referendum on legitimacy.

Tom Tyler: Sure.

Risa Goluboff: What are the implications of that for the procedural justice you have in mind?

Tom Tyler: These behaviors are coming out of a culture, and even if the police didn't engage in that kind of egregious behavior, there'd still be a lot of cultural problems with policing in America. You know, if you look at the police officers in America today, less than 10% of what they do during their daily activities has anything to do with control or sanctioning of the use of force. And the other 90% is about other things, many of which are what we would call social work kind of problems. And so they're basically sending these officers into situations that are a mismatch to the skills they actually have, and for which the skills that they have are really bad. So instead of de-escalating, they're escalating because anytime somebody with a gun walks into a situation, the tension goes up.

Risa Goluboff: Yes it does.

Tom Tyler: Part of this is a failure of our society because we've withdrawn support for a lot of social services in our communities. And we've kind of defaulted for the police to come and, and deal with these problems. So we could change that by bulking up social services. New Haven just created an alternative to 911. If you have a mental health problem, you call a different number. You get a mental health worker. You know, so that would help to concentrate the police on tasks that are actually appropriate to their real skillset. I think in the long run, that would be a better way to approach this than, you know, the traditional way of just taking the bad apples and trying to punish them. I think we should do that too, but I'm just saying, I don't think that, you know, that's a way in which a psychologist and a law professor probably are different. I want to go ahead of the situation and change the structure so the problem doesn't happen.

Greg Mitchell: I do want to make sure we mention before we end here, that Tom has a new book coming out, I believe on law and psychology.

Tom Tyler: It's called "An Advanced Introduction to Law and Psychology."

Risa Goluboff: Well, it's hard for me to see anybody listening to this fascinating conversation, NOT wanting to know more.

Tom Tyler: I think that the, the book that I wrote has been helped immeasurably by teaching in a law school, because what a lot of psychologists who do work in this area have not done is they've not tried to fit their work into an understanding of how the legal system actually operates and what are the issues for legal authorities. And if you teach in a law school, you pretty much have to think about that. So I give a lot of credit for what I think is good about the book to a real mixing of psychology into an understanding of the law.

Greg Mitchell: Tom just validated my career choice.

[Laughing]

[THEME MUSIC COMES IN]

Risa Goluboff: Thank you so much for talking with us today, Tom.

Greg Mitchell: I really enjoyed it.

Tom Tyler: Thank you.

[THEME MUSIC UP, THEN UNDER]

Greg Mitchell: So what do you think Risa, are you sold on the power of procedural justice?

Risa Goluboff: I think it's pretty compelling. I think it's pretty compelling. Um, here's a question I had that maybe you can answer.

Greg Mitchell: Okay.

Risa Goluboff: When Tom says, you know, I'm reflecting the responses that we get from people, right, these aren't my views, these are people's views. To what extent has there been discussion in the literature about the possibility that people are articulating views that they think the experimenters want to hear, or, you know, views that are consonant with our values, but that maybe aren't really what motivates them, or aren't really what creates trust. Right? So I could imagine my children saying, well, you didn't have a fair process and then you have a fair process and really kind of what they meant was you didn't get the outcome I wanted, but, but that it's, it's more palatable either socially or in conjunction with our jointly held values to talk about process rather than outcomes as a way of thinking about things. Is that an issue in the literature?

Greg Mitchell: Oh, I think it is an issue. I think you do need to be skeptical about self-reports regarding intentions and what matters and also about their supposed behaviors. And there are really two reasons to be worried. One, people may not have great insight into what really motivates them.

Risa Goluboff: Right.

Greg Mitchell: People may not be being fully candid about their views or about what they've done in the past. So it's very important that you not rely just on survey research. And that's why there are lots of studies that do examine actual behaviors and how they relate to different levels of perceived legitimacy. I think without the behavioral work, we wouldn't have nearly the confidence we do that it actually matters to behavior that people are treated fairly and that they perceive the institution as a legitimate institution.

Risa Goluboff: Well, that's where I thought the work that Tom is doing with the Justice Collaboratory and the actual interventions into policing is so interesting, and when he's talking about, you know, what difference it makes for him to be in a law school, rather than a psychology department, I was thinking that's got to be another difference, right, is he's really interacting with policing scholars like Rachel Harmon and interacting with police departments and really trying to put into practice the findings that he has in his, you know, psychology, and that just seems incredibly important and definitely seems like a product of this interdisciplinary location that he inhabits.

Greg Mitchell: There's no question – psychologists in law schools are much more applied researchers than basic researchers. And you're seeing this with Tom's work and this need for some evaluation metrics. Institutions are sometimes sold on just the basic research and frankly, sometimes they shouldn't be. They should be much more skeptical of the basic research and they should demand some kind of evaluation for that work because more often than not, the basic research just won't scale up and lead to positive results because there's so many complications once you try to actually implement a general theory or very basic research. So I am also delighted that Tom is doing some of the evaluation research on his research involving police officers. I think you're absolutely right. That's driven largely by him being more engaged with the law school.

Risa Goluboff: This was so interesting. And, uh, I really, really enjoyed both hearing from Tom about his work, but also, you know, watching your mind work and learning more about how you think about the world, so that was such a pleasure.

Greg Mitchell: Thank you. And I hope my Southern accent has been captured.

Risa Goluboff: I'm sure it has.

Greg Mitchell: All right. Excellent.

[THEME MUSIC UP, THEN UNDER]

Greg Mitchell: That does it for this episode of Common Law. If you'd like more information on Tom Tyler and his work on procedural justice, visit our website, Common Law Podcast dot com. There you'll find links to all of our past episodes, our Twitter feed and more.

Risa Goluboff: In two weeks, UVA law professor Aditya Bamzai will join the podcast, along with co-host professor John Harrison, to explore the foundational case underlying U.S. versus Texas, the federal government suit to stop Texas' controversial abortion law.

Aditya Bamzai: The court says, well, a sovereign entity has the right to apply to its own courts for any proper assistance, wherever there's an injury to the general welfare. And that sounds awfully broad.

Risa Goluboff: We can't wait to share that with you. I'm Risa Goluboff.

Greg Mitchell: And I'm Greg Mitchell. Thanks for joining us.

[THEME MUSIC UP, THEN UNDER]

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[THEME MUSIC UP, THEN OUT]