

This article is published in a peer-reviewed section of the Utrecht Law Review

## Neutrality as an Element of Perceived Justice in Prison: Consistency versus Individualization

Miranda Boone  
Mieke Kox\*

### 1. Introduction

Legitimacy may generally be understood as ‘the belief that authorities, institutions, and social arrangements are appropriate, proper, and just’.<sup>1</sup> Such a belief is supposed to result in deferring decisions and rules and is therefore associated with compliance. Legitimacy is often distinguished in distributive and procedural justice. The former refers to the outcome of the procedure which ought to be fair if it is based on equality, equity and/or need.<sup>2</sup> The latter – on which this contribution focuses – addresses the fairness of the manner in which authority is exercised.<sup>3</sup> In prison, illegitimacy – or unfairness, an interchangeable concept for injustice in prison literature – is related to violence and/or misconduct during and with recidivism after imprisonment,<sup>4</sup> while fairly executed prison policies are assumed to decrease the negative effects of detention.<sup>5</sup> These possible effects show the importance of legitimacy in prison.

Staff treatment is considered one of the key elements to accomplish legitimacy in correctional institutions.<sup>6</sup> According to Tyler – an expert in procedural justice – neutrality is an important characteristic of this staff treatment. He defines ‘neutrality’ as the extent to which decisions are based on a consistent

\* Miranda Boone (e-mail: [M.M.Boone@uu.nl](mailto:M.M.Boone@uu.nl)) is Professor of Penology and Penitentiary Law at the University of Groningen and associate professor of Criminology and Criminal Law at Utrecht University (the Netherlands). Mieke Kox (e-mail: [kox@law.eur.nl](mailto:kox@law.eur.nl)) is a PhD student at the Criminology Department of Erasmus University Rotterdam (the Netherlands).

1 T. Tyler, ‘Psychological perspectives on legitimacy and legitimation’, 2006 *Annual Review of Psychology* 57, pp. 375-400. See also J. Tankebe & A. Liebling, *Legitimacy and Criminal Justice: An International Exploration*, 2013.

2 K. Törnblom & R. Vermunt, *Distributive and Procedural Justice: Research and Social Applications*, 2007, pp. 1-12.

3 T. Tyler, *Why people obey the law: Procedural justice, legitimacy and compliance*, 2006.

4 R. Sparks, A. Bottoms, & W. Hay, *Prisons and the Problem of Order*, 1996; T. Tyler, ‘Legitimacy in corrections: Policy implications’, 2010 *Criminology & Public Policy* 9, no. 1, pp. 127-134; M.D. Reisig & G. Mesko, ‘Procedural justice, legitimacy, and prisoner misconduct’, 2009 *Psychology, Crime & Law* 15, no. 1, pp. 41-59, DOI: 10.1080/10683160802089768; K.A. Beijersbergen, A.J.E. Dirkzwager, V.I. Eichelsheim, P.H. Van der Laan & P. Nieuwebeerta, ‘Procedural Justice, Anger, and Prisoners’ Misconduct: A Longitudinal Study’, 2014 *Criminal Justice and Behavior*, DOI: 10.1177/0093854814550710; see also K.A. Beijersbergen, A.J.E. Dirkzwager, T. Molleman, P.H. van der Laan & P. Nieuwebeerta, ‘Procedural justice in prison: The importance of staff characteristics’, 2013 *International Journal of Offender Therapy and Comparative Criminology*, DOI: 10.1177/0306624X13512767.

5 D. Franke, D. Bieze & D. Layton Mackenzie, ‘Legitimacy in corrections, a randomized experiment comparing a boot camp with a prison’, 2010 *Criminology & Public Policy* 9, no. 1, pp. 89-117; A. Liebling, ‘Incentives and Earned Privileges Revisited: Fairness, discretion, and the quality of prison life’, 2008 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 9, supplement 1, pp. 25-41; K.A. Beijersbergen, A.J.E. Dirkzwager, V.I. Eichelsheim, P.H. van der Laan & P. Nieuwebeerta, ‘Procedural justice and prisoners’ mental health problems: A longitudinal study’, 2014 *Criminal Behaviour and Mental Health* 24, no. 2, pp. 100-112.

6 J.R. Sparks & A.E. Bottoms, ‘Legitimacy and order in prisons’, 1995 *The British journal of Sociology* 46, no. 1, pp. 45-62; A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers: legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499; A. Liebling, *Prisons and their Moral Performance. A Study of Values, Quality, and Prison Life*, 2004; S. Ahmand, *Fairness in prisons. Unpublished PhD thesis University of Cambridge*, 1996; K. Beijersbergen, *Procedural justice in prison. A study on determinants and consequences of a procedurally just treatment of prisoners*, 2014.

application of rules, instead of the personal opinions of officers.<sup>7</sup> Important aspects of neutrality are an equal application of rules across people and across time.<sup>8</sup> The changes across time and the differences between people which may justify or even require a different application of the rules are not yet extensively explored in this literature. It is recognized, however, that justice is perceived differently in different situations. This is particularly related to interpersonal relations. According to Tyler, people attach more importance to bias suppression and consistency in formal situations, while the quality of the decisions is considered to be of greater importance in more cooperative situations.<sup>9</sup> He emphasizes the importance of dignity, respect and the trustworthiness of authorities.<sup>10</sup> It also makes a difference how people value their relation with the decision-maker. Tyler speaks of the group-value model in cases in which people value a long-term relation with the decision-maker. Compared to regular cases, people consider the decision-making procedure to be more important than the outcome of this decision, e.g. equality.<sup>11</sup> So far, neutrality is not further defined in this literature.

General prison literature emphasizes individual treatment as an equally important aspect of fair treatment in prison as consistency. Although this tension between individuality and consistency is also included in the concept of neutrality, this tension is not elaborated in depth in the literature on procedural justice. This tension is addressed in this contribution: we further explore neutrality as an element of procedural justice in the context of prison life and examine how the need for consistency is related to the need for individualization for persons deprived of their liberty. A better understanding of the relation between consistency and individuality in prison might provide more insight into relevance of procedural justice literature in the context of prison life and thus in the accomplishment of legitimacy in prison.

## 2. Procedural justice in prison

Sparks, Bottoms and Hay were just about the first to study order and legitimacy in prison by conducting a comparative study of two maximum security prisons.<sup>12</sup> In a later publication, Sparks and Bottoms follow Beetham<sup>13</sup> and distinguish three criteria of legitimate power; conformity to rules, justifiability of rules in terms of shared beliefs, and expressed consent.<sup>14</sup> They conclude that prison regimes need to incorporate prisoners' 'voices', i.e. their beliefs on what is justified to accomplish legitimacy.<sup>15</sup> Franke, Bierie and Mackenzie recently conducted a study on experienced legitimacy in the correctional system. They draw on the procedural justice literature and conclude that perceptions of legitimacy do change during the course of incarceration and that the type of facility does influence opinions on legitimacy, but only to the extent that the facility employs specific, legitimacy-building characteristics. The experiences of prisoners significantly influence the way they view the criminal justice system in general at the time of their release.<sup>16</sup>

Tyler draws from both studies to define a procedural justice framework for corrections. This framework consists of four elements: voice, neutrality, treatment with respect and dignity, and trust in authorities.<sup>17</sup> Voice refers to the extent to which prisoners can contribute to the decision-making both

7 T. Tyler, 'Legitimacy in corrections: Policy implications', 2010 *Criminology & Public Policy* 9, no. 1, p. 130.

8 T. Tyler, 'Procedural justice and the courts', 2007 *Courts Review* 44, no. 1, p. 30; G.S. Leventhal, 'What should be done with Equity theory? New approaches to the study of Fairness in social relationships', in K.J. Gergen, M.S. Greenberg & R.H. Willis (eds.), *Social exchange: advances in theory and research*, 1980, pp. 27-54; K. Bos & L. van der Velden, *Legitimiteit van de overheid, aanvaarding van overheidsbesluiten en ervaren procedurele rechtvaardigheid*, 2013.

9 T. Tyler, 'What is procedural justice? Criteria used by citizens to assess the fairness of legal procedures', 1988 *Law and Society Review* 22, no. 1, p. 107.

10 T. Tyler, *Why people obey the law: Procedural justice, legitimacy and compliance*, 2006, p. 276.

11 T. Tyler, 'The Psychology of Procedural Justice: A Test of the Group-Value Model', 1989 *Journal of Personality and Social Psychology* 57, no. 5, pp. 830-838.

12 R. Sparks, A. Bottoms, & W. Hay, *Prisons and the Problem of Order*, 1996.

13 D. Beetham, *The Legitimation of Power*, 1991.

14 J.R. Sparks & A.E. Bottoms, 'Legitimacy and order in prisons', 1995 *The British journal of Sociology* 46, no. 1, p. 47.

15 *Ibid.*, p. 59.

16 D. Franke, D. Bierie & D. Layton Mackenzie, 'Legitimacy in corrections, a randomized experiment comparing a boot camp with a prison', 2010 *Criminology & Public Policy* 9, no. 1, pp. 89-117.

17 D. Franke, D. Bierie & D. Layton Mackenzie, 'Legitimacy in corrections, a randomized experiment comparing a boot camp with a prison', 2010 *Criminology & Public Policy* 9, no. 1, pp. 89-117; T.R. Tyler, 'Legitimacy in corrections: Policy implications', 2010 *Criminology and Public Policy* 9, no. 1, pp. 127-134.

by formal mechanisms that allow prisoners to have a meaningful say in the decision-making process and by giving them concrete opportunities to interfere in this process. Neutrality – the central element in this contribution – addresses the extent to which decisions are based on a consistent application of rules instead of the personal views of decision-makers. Treatment with respect and dignity is associated with courtesy, the recognition of human rights and the absence of degrading or stigmatizing practices. Trust in authorities can be accomplished by giving inmates the opportunity to share their concerns, considering these concerns and justifying their decisions.

Tyler follows Franke et al. who stress that also other elements are required to achieve procedural justice in a prison setting, namely staff intentions, daily routines, environmental structure, humaneness, and interactions with other inmates can influence attitudes substantially.<sup>18</sup> This is more in line with the findings of the prison scholars Hulley et al. who state that the elements mentioned in the procedural justice literature as such are insufficient to accomplish legitimacy in prisons given the differences between prison officers and policing officers.<sup>19</sup> Their definition of respect may, according to these authors, ‘represent a grounded understanding of what Tyler calls “procedural justice”’. They describe respect as being treated autonomously, without prejudice and with individual recognition. They distinguish two different elements that may contribute to prisoners’ feelings of respectful treatment, namely the interpersonal relationships with staff and the prisoners’ need to get things done. The first aspect is demonstrated by staff speaking politely, with courtesy, and in a non-aggressive manner. The second aspect of respect – defined as ‘organizational respect’ by the authors – is connected to the extent to which staff take prisoners’ needs into account and help them to realize these. This comes to the fore when prisoners need to fulfil certain requirements to qualify for early release and staff listen to them, take their concerns seriously and respond honestly and without undue delay.<sup>20</sup>

Although the framework of procedural justice in prison is not as yet unambiguously defined, both procedural justice studies and prison studies do emphasize the importance of relational criteria in order to accomplish procedural justice in prison. Liebling – a pioneer in prison studies – also puts relationship dimensions at the centre of her theory on moral performance in prison and states that staff apply rules *in* and *through* relationships.<sup>21</sup> She states that prison officers deploy their authority through relationships with prisoners and that they should only use the rules when relationships are not sufficient.<sup>22</sup> In a later publication, she adds staff professionalism or legitimate practices to her analysis which means that good prison officers should not be required to use force to get things done although they should be capable of using these rules if needed by the situation. This emphasizes the importance of talking to prisoners, spending time with prisoners and relational work during their job to make their authority legible.<sup>23</sup>

### 3. Consistency versus individualization in the context of prison life

The tension between consistency and individual treatment is in particular expressed by what Liebling describes – and prisoners consider – as fairness.<sup>24</sup> Relationships between staff and inmates are considered to be an important element of the prisoners’ perceptions of fairness. Ahmand stresses, for example, that fairness by staff is more important for prisoners than the fairness of the regime and the fairness of the

---

18 T. Tyler, ‘Legitimacy in corrections: Policy implications’, 2010 *Criminology & Public Policy* 9, no. 1, pp. 127-134; D. Franke, D. Bieri & D. Layton Mackenzie, ‘Legitimacy in corrections, a randomized experiment comparing a boot camp with a prison’, 2010 *Criminology & Public Policy* 9, no. 1, pp. 89-117.

19 S. Hulley, A. Liebling & B. Crewe, ‘Respect in prisons. Prisoners’ experiences of respect in public and private sector prisons’, 2012 *Criminology & Criminal Justice* 12, no. 3, pp. 3-23.

20 S. Hulley, A. Liebling & B. Crewe, ‘Respect in prisons. Prisoners’ experiences of respect in public and private sector prisons’, 2012 *Criminology & Criminal Justice* 12, no. 3, pp. 3-23.

21 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499; A. Liebling, *Prisons and their Moral Performance. A Study of Values, Quality, and Prison Life*, 2004.

22 A. Liebling, ‘Incentives and Earned Privileges Revisited: Fairness, discretion, and the quality of prison life’, 2008 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 9, supplement 1, p. 40.

23 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, p. 496.

24 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499.

procedures.<sup>25</sup> Such fairness requires a complex balance between consistency and flexibility since over-individualized decisions may lead to arbitrariness and consistency does not always result in fairness.<sup>26</sup> Judgements and discretionary powers are – besides rules – important elements to accomplish fairness (via respect and due process), to maintain order (via knowledge and contact) and to provide security, stability and safety in prison (via intelligence): this may be better done by surveillance, the threat of sanctioning and the art of persuasion than by strictly following the rules.<sup>27</sup> The lower the privilege level, the lower the perceived levels of fairness, according to Liebling.<sup>28</sup>

Consequently, the use of discretion is considered an inevitable part of the work of prison officers: this means that prison officers have to be able to decide when real differences between individuals and situations justify different applications of the rules.<sup>29</sup> This is an interpretative process according to Liebling, during which prison officers enforce their authority rather than the rules.<sup>30</sup> Given its importance, these discretionary powers of and the authority used by prison officers have repeatedly been studied, although it is noteworthy that these studies were conducted in the UK by a limited number of scholars from the same institute.<sup>31</sup> Liebling shows, for example, two kinds of models for prison officers who have to deal with these discretionary powers: the ‘rule following/compliance model’ which is mainly used by risk-averse officials, on the one hand, and the ‘negotiation model’ that is used by most prison staff, on the other.<sup>32</sup> She also differentiates good or right and too narrow or close relations between prisoners and staff; the former refers to relationships somewhere in between formality and informality, closeness and distance, policy-by-consent and imposing order; the latter concerns the lack of boundaries and professional distance in the relationships which may result in too much discretion and, as such, in a less predictable prison life which is generally considered less fair.<sup>33</sup>

These discretionary powers increase the importance of staff professionalism: staff should adequately use their authority in order to accomplish a fair prison climate.<sup>34</sup> This means, according to a study by Crewe et al., that a lack of knowledge, the deferring of decisions, and both the under-use and over-use of powers should be avoided since these have – among other things – a negative effect on the prisoners’ quality of life. Prisoners want officers to set limits, to protect them from themselves and other prisoners, to impose sanctions if rules are violated, and to guide them in important life decisions.<sup>35</sup> Crewe et al. stress that prison officers should help prisoners, care for prisoners, and show respect for prisoners (if the prisoner shows respect to them). Prisoners appreciate it when prison officers have experience, show knowledge and general competence, and are able to help them and to do things for them. This increases a fair prison climate.<sup>36</sup> Finally, it is important that prison officers use their authority impartially, predictably and flexibly as this influences the moral climate in prison according to Liebling.<sup>37</sup> She states: ‘Staff-prisoner relationships were significant because they constituted the framework within which decisions were made

25 S. Ahmand, *Fairness in prisons*. Unpublished PhD thesis University of Cambridge, 1996, p. 26.

26 Ibid., p. 267.

27 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499; A. Liebling, ‘Prison officers, policing and the use of discretion’, 2000 *Theoretical Criminology* 4, p. 348.

28 A. Liebling, ‘Incentives and Earned Privileges Revisited: Fairness, discretion, and the quality of prison life’, 2008 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 9, supplement 1, p. 38.

29 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499.

30 A. Liebling, *Prisons and their Moral Performance. A Study of Values, Quality, and Prison Life*, 2004, p. 261; A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499.

31 See for example A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499; A. Liebling, ‘Prison officers, policing and the use of discretion’, 2000 *Theoretical Criminology* 4, pp. 333-357; B. Crewe, A. Liebling & S. Hulley, ‘Staff-Prisoner Relationships, Staff Professionalism, and the Use of Authority in Public- and Private-Sector Prisons’, 2014 *Law & Social Inquiry*, DOI: 10.1111/lsi.12093.

32 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, p. 489.

33 A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499.

34 See also A. Liebling, ‘Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited’, 2011 *European Journal of Criminology* 8, no. 6, pp. 484-499.

35 B. Crewe, A. Liebling & S. Hulley, ‘Staff culture, use of authority and prisoner quality of life in public and private sector prisons’, 2011 *Australian & New Zealand Journal of Criminology* 44, no. 1, pp. 94-115.

36 B. Crewe, A. Liebling & S. Hulley, ‘Staff-Prisoner Relationships, Staff Professionalism, and the Use of Authority in Public- and Private-Sector Prisons’, 2014 *Law & Social Inquiry*, DOI: 10.1111/lsi.12093, p. 25.

37 A. Liebling, ‘Prison officers, policing and the use of discretion’, 2000 *Theoretical Criminology* 4, pp. 333-357.

by prison officers and evaluated by prisoners. They were the route through which everything else was achieved. What officers could do was limited not by rules but by relationships (they were both a resource and a constraint).<sup>38</sup> Liebling therefore states that prison officers need to be ‘specialists in mediation and arbitration.’<sup>39</sup>

#### 4. The Tilburg Prison Study

The above makes clear that the use of discretion is inextricable in prison life, as it is of most relations of power. In this contribution, we will further elaborate on the tension between a consistent and individualized application of the rules on the basis of the results of a dataset of 46 qualitative interviews with prisoners and 30 interviews with prison officers – varying from prison workers to governors of the institution – in the Tilburg Prison in the Netherlands. The question we want to answer is how prison officers in Tilburg Prison use their discretionary powers and how this is perceived by prisoners. This answer might help to further define neutrality as an element of procedural justice in the context of prison life and provide an insight into the importance of procedural justice for accomplishing legitimacy in prison.

Tilburg Prison is subject to a special situation. Since February 2010, about 650 Belgian prisoners are detained in this prison. They are subjected to a predominantly Belgian regime that is being executed by Dutch staff under a Belgian-Dutch board of governors. This unique construction is the result of the Dutch Government’s desire to limit the consequences – in terms of the numbers of staff – of the steadily decreasing need for prison capacity and the Belgian urgent need for more cell capacity. In 2011, Beyens and Boone conducted a study – with the assistance of Liefwaard, Kox, Vanhouche and Van der Poel – on the experiences of prisoners and staff in Tilburg Prison.<sup>40</sup> The central question of the study was: ‘What are the (positive, negative or other) experiences with the execution of the Belgian detention regime in a Dutch institution, what are the consequences of those experiences and what are the possible causes of these experiences?’

This qualitative study is theoretically based on an instrument that Liebling developed to Measure the Quality of Prison Life (MQPL) as a result of an extensive and lengthy preliminary qualitative study among detainees and – later on – prison staff.<sup>41</sup> It is comprised of a questionnaire with more than 100 closed questions to measure 14 dimensions of prison life. Although the MQPL is originally designed as a quantitative instrument, the 14 dimensions of this instrument were used to develop a qualitative topic list for semi-structured, but very open, interviews with prisoners and prison staff. This topic list consisted of 8 topics, related to the 14 dimensions of the MPQL, namely material facilities, regime, preparation for early release, contact with the outside world, relations with the staff, relations among prisoners, safety, and fairness.<sup>42</sup> The dimension of respect was encountered in several of these topics due to its diverse aspects and manifestations. Besides, interviewees were also given the opportunity to bring other topics to the fore.

Interviews were the main data source of this study. 36 Belgian detainees and 30 staff members were interviewed as to their experiences with the Belgian regime. Both prisoners and staff were selected on the basis of a quota sample. The following criteria were used for the selection of prisoners: previous detention experiences in Belgian penitentiary institutions, detention phase, department, cultural background and language. Since not all prisoners were willing to participate in this study and since 12 prisoners did not turn up for the interview, another (double) selection was made and approached afterwards until the maximum of the different quota was achieved. The staff members were selected on the basis of the following selection criteria: current position, division, seniority, gender and cultural background. They

---

38 A. Liebling, ‘Incentives and Earned Privileges Revisited: Fairness, discretion, and the quality of prison life’, 2008 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 9, supplement 1, p. 38.

39 A. Liebling, ‘Prison officers, policing and the use of discretion’, 2000 *Theoretical Criminology* 4, pp. 333-357.

40 K. Beyens & M. Boone, assisted by T. Liefwaard, M. Kox, A.S. Vanhouche & S. van der Poel, *Zeg maar Henk tegen de Chef. Ervaringen met het Belgische detentieregime in de P.I. Tilburg*, 2013.

41 A. Liebling, *Prisons and their Moral Performance. A Study of Values, Quality, and Prison Life*, 2004.

42 K. Beyens & M. Boone, assisted by T. Liefwaard, M. Kox, A.S. Vanhouche & S. van der Poel, *Zeg maar Henk tegen de Chef. Ervaringen met het Belgische detentieregime in de P.I. Tilburg*, 2013, p. 67.



were all willing to participate in this study. All interviews took place in the so-called visitors building where prisoners also meet their lawyers, family and friends, and others. The interviews lasted between one and a half and two hours and were recorded and literally transcribed. In addition, fieldwork notes of observations in the Tilburg Prison were used. Preceding and halfway through the phase of interviews, two researchers remained for several days in different units of Tilburg Prison to introduce the study, to observe staff-prisoner interactions and to examine the physical conditions at the prison. These findings were written down in fieldwork notes. All transcripts of the interviews and fieldwork notes were imported in MaxQda, a program to analyse qualitative data. To analyse the data, we build upon the aforementioned dimensions by Liebling.

In the original study, the tension between consistency and individualization was mainly addressed as a sub-topic of Fairness. We asked prisoners and staff for example: do you think that the rules are applied fairly? For everybody? Are some people treated differently than other people? Why? What do you think of this? The tension between these two aspects of treatment was also discussed in relation to other topics. Therefore, we re-analysed the data coded with the main category of 'staff-prisoner relationships' and the sub-categories: 'attitude', 'dynamic security', 'close relations', 'distance relation-staff', 'individualised approach', 'opportunities to negotiate', 'respect/humanity'. Of the main category 'respect', we re-analysed: 'knowledge of the rules', 'equal application of the rules', 'attribution of privileges', and 'opportunities to negotiate'.

#### 4.1. Results

One of the most striking results of this study is that Belgian prisoners are generally positively surprised by the attitude of and interactions with the Dutch staff. In particular by the prison staff's open attitude, the friendliness of these officers and their willingness to listen to the prisoners. They are very appreciative of the fact that staff are involved in certain activities, e.g. sports and open-air activities and/or take the time to drink coffee or smoke a cigarette with them. This individualized approach seems to be a dominant factor that contributes to the satisfaction of prisoners and this result is therefore in line with the literature described above. The Dutch staff use such an individualized approach and maintain such good staff-prisoner relationships for reasons of humanity and fairness, but also to provide security, stability and safety in prison, a strategy that is referred to as dynamic safety in the prison literature.<sup>43</sup>

However, not all prisoners are able to maintain such good relationships with the staff, which is mainly due to communication issues. A large group of prisoners who do not speak Dutch – or Flemish<sup>44</sup> – are hampered by language barriers and are thus not able to create good relationships with prison officers. Consequently, they are not able to gain as much from the 'chat culture' and the individualized approach in Tilburg Prison as prisoners who do speak Dutch. Although prison officers think they are able to solve most of these problems by 'talking with hands and feet' or asking other prisoners to translate for them, the non-Dutch-speaking prisoners reported feelings of being neglected and inferior to other prisoners.<sup>45</sup> They feel that they are not being equally treated which has a negative impact on their perceived fairness as will be shown below.

##### 4.1.1. Rules and procedures

In order to further explore the use of discretionary powers and to determine whether the rules are fairly and equally applied by prison officers in Tilburg Prison, we need to know more about the clarity of the rules and procedures in this prison. Most prisoners stated that they have the idea that the rules and procedures are clearly explained to them. They receive an overview of the rules upon their arrival in prison and are given the opportunity to ask questions about these rules. Therefore, it is clear to them what they can expect and what is expected from them. The accounts of the prisoners show that they do

43 B. Crewe, 'Soft Power in prison: Implications for staff-prisoner relationships, liberty and legitimacy', 2011 *European Journal of Criminology* 8, no. 6, pp. 455-468.

44 Flemish and French are the two national languages in Belgium. Since Flemish and Dutch are very much alike, Dutch prison officers and Belgian prisoners are able to communicate in Dutch.

45 See also M. Kox, S. de Ridder, A. Vanhouche, M. Boone & K. Beyens, 'Detentiebeleving van strafrechtelijk gedetineerden zonder verblijfsrecht', 2014 *Tijdschrift voor Criminologie* 56, no. 2, pp. 31-47.

not have to foresee any problems as long as they follow the rules. This is appreciated by the prisoners, which is illustrated even more when they compare this situation in the Dutch Tilburg Prison to the situation in Belgian prisons.

‘This is usually with the ambulatory prison guard. He has a chat with you in the sense of: we have these working methods and rules. If you follow the rules, you don’t have a problem. If you don’t follow the rules, you have a problem, but we don’t. But you know where you are. You get that information and I find that a great advantage.’ (G27)

*‘Dat is gewoonlijk met de ambulante PIW-er. Die heeft een gesprekje met u in de zin van: Wij werken hier op die manier en dat hier zijn de regels. Zus zo dit, dat als ge er u aan houdt, geen probleem als gij er u niet aan houdt hebt gij een probleem en wij niet. Maar ge weet waar ge aan toe zijn. Ge krijgt die informatie en dat vind ik hier wel een heel groot voordeel.’ (G27)]*

Many prisoners reported that they value the clarity of the rules. The interviews showed that – like Crewe et al. argue<sup>46</sup> – prisoners prefer to have set limits. These set limits were less common in Belgium according to our respondents.

‘Here you know very clearly: this is permitted and this is not permitted. While in Belgium, you try to push the boundaries with every new prison officer. What does he accept? While here... It’s not a perfect system, that does not exist. But you have a line, and you can go a little bit to the right or a little bit to the left, but in general they hold on to that line and I think that is good. You can’t go to the first prison officer and say: can we do this? And when he says no go to the second prison officer and he says yes. Because he will tell you straight away: What did my colleague say? No, in that case I won’t undermine my colleague. If my colleague says no, it’s for me also no.’ (G28)

*‘Hier weet ge heel duidelijk van dat kan en dat kan niet. Terwijl in België bij iedere cipier gaat het ge hun grenzen aftasten van wat kan ik niet en wat kan ik wel. Wat kan ik bij diene. Terwijl hier, het is geen perfect systeem, dat bestaat niet. Maar ge hebt wel die lijn en ge kunt een beetje links en een beetje rechts van gaan, maar over het algemeen wordt die lijn aangehouden en dat vind ik hier wel goed. Het is niet als ge naar de ene PIW-er gaat en vraagt, kunnen we dat regelen, dat diene nee zegt en dat ge twee minuten later naar een andere gaat en die zegt ja. Want die zegt u gewoon rechtuit: wat heeft mijn collega gezegd? Nee, dan ga ik mijn collega er niet onderuit halen hè. Als mijn collega nee zegt, is het bij mij ook nee.’ (G28)].*

Within a department, prison officers tried to draw a common line team-wise. However, this line might differ among departments as the following quote shows. This requires some flexibility on the part of prisoners.

‘And then we all got all chefs<sup>47</sup> from another unit. You then immediately notice that they are not our guards. Fasten everything, close the cabinets, close our doors. Closing at 4.30 pm, there it’s done, enter your cell, door closed, finished. Our own guards close the doors at 5, sometimes the door is still open at 5 past 5. These chefs didn’t even come to talk to you or anything.’ (G19)

*‘En toen kregen we allemaal cheffen van een andere unit. Dan zie je wel direct dat dat niet onze cheffen waren. Alles vast doen, de kasten vast doen, onze deuren vast doen. Om half 5 sluiten, hup, het is gedaan, je moet op je cel, deur toe en het is hier afgelopen. Bij onze cheffen is dat stipt om 5 uur de deuren toe, zelfs om 5 na 5 is onze deur soms nog open. Die cheffen kwamen ook niet met u praten ofzo.’ (G19)].*

46 B. Crewe, A. Liebling & S. Hulley. ‘Staff culture, use of authority and prisoner quality of life in public and private sector prisons’, 2011 *Australian & New Zealand Journal of Criminology* 44, no. 1, pp. 94-115.

47 Belgian prisoners often refer to prison officers as ‘chefs.’

#### 4.1.2. Consistency versus individualization

The prisoners told us to appreciate the clarity of the rules and the procedures, but they are generally glad that these are not applied in a too straight-lined way; some flexibility or grey area is needed according to these prisoners. They mention several cases in which the rules were applied in a too draconian manner in their opinion. A prisoner recalled, for example, that, a while ago, it was no longer allowed to bring objects which had been made in the handicraft section into their cells. This was understandable for Buddha sculptures and partly for flowerpots, but the prisoners did not understand why they could not bring drawings – pieces of paper – to their cell. Many prisoners also gave examples of situations in which the rules were not strictly followed. The most referred to example concerns the broad interpretation of the rules regarding the use of the telephone in case of a family emergency or the need for a lawyer.

Also the staff mentioned the importance of being flexible as being too rigid may result in a counter-productive effect. They provide many examples in which too strict an application of the rules would have led to ‘unworkable’ situations. Many prison officers said that they constantly use their discretionary power and to make exceptions to the rules to keep things ‘workable’. The examples recalled by the officers show that this refers both to maintaining order in prison and accomplishing fairness for prisoners.

‘No, if you exactly follow the rules, it has always been like that in the Justice sector, then it is not workable. It is as simple as that. You have the lines, the rules, and in between is a small grey zone. You have to have that flexibility. If they go beyond those lines, they have to give something back. For example, if a prisoner suddenly starts to shout at you, while up to that point he has always tried his best, than you ask: why did you do that? Probably he just received some bad news from home. Then you don’t say: you shouted at me, so now I am going to report you. You have to be social in those cases. (...). The prisoners have to know that as well, they have to tell you if they don’t feel well. I just received bad news, leave me alone for a while. If you follow the rules exactly, 100% according to the rules, it is not workable.’ (M17)

*[‘Nee. Als je volledig volgens regels werkt, dat is altijd geweest bij justitie, dan is het niet werkbaar. Zo simpel is het. Je hebt een lijn, de regellijn, en daartussen in heb je nog een klein grijs gebied. Die soepelheid moet je een beetje hebben. En als ze buiten die buitenlijnen komen dan moet ze het teruggeven. Als een gedetineerde bijvoorbeeld op de werkzaal begint te schelden, maar doet wel altijd z’n best. Dan vraag je; wat is de reden? Voor hetzelfde geld heeft hij net slecht nieuws gekregen van thuis, en dan ga je niet zeggen je hebt me uitgescholden en nu krijg je een rapport. Daar moet je dan wel weer sociaal in zijn. (...) De gedetineerden moeten dat ook weten, ze moeten dat aangeven, als ze niet duidelijk in hun vel zitten. Ik heb slecht nieuws gehad, laat me gewoon alleen zitten. Als je precies volgens de regels gaat werken, maar dan 100% volgens de regels dan is dat niet meer werkbaar.’ (M17)]*

Prison officers stress that equal treatment is very important, probably the most important aspect in prison, but the same officers also stress the importance of making exceptions now and then. Making exceptions is part of the right working method according to these officers: they have to be able to use an individual approach and to be flexible. This is considered a professional skill that has to be used to give opportunities to prisoners that they would otherwise miss. However, many prison officers have difficulties in explaining when they consistently apply the rules and when they use their discretionary powers and make an exception. Such a decision seems to be mainly based on the experience and gut feeling of the staff. The following prison officer tried to illustrate his considerations:

**R:** ‘Look, I have a lot of experience. Those exceptions that we make, those exceptions to the rules, are specific to individual cases. Exceptions are not made for everyone, but only for those who really need it. That is our approach in achieving our goals.’

**I:** ‘And what am I supposed to think of? What exceptions?’

**R:** ‘For example, one person almost committed suicide, almost. Normally, this person would never be eligible to become a cleaner at the unit. He does not meet the requirements. He has



been reported, he was punished disciplinarily. Still, I did make an exception, to find out if he could really change his behaviour. And it works! But if I would have strictly applied the requirements, then I would never have found out if he really could change his behaviour. (...)’

I: ‘And how do the other prisoners respond to that?’

R: ‘They say: why do some prisoners achieve more than others? And then I explain: he did listen to our advice and then he achieves more than you. If you continue screaming and cursing, you will not achieve anything.’ (M7)

[R: ‘Kijk, ik heb heel veel ervaring. Die uitzonderingen die wij maken, die uitzondering op de regels, dat is eigenlijk specifiek voor individuele gevallen. Niet voor iedereen worden uitzonderingen gemaakt, maar wel voor degenen die het echt nodig hebben. Dat is om onze aanpak om onze doelen te bereiken.’]

I: ‘En waar moet ik dan aan denken? Wat voor uitzonderingen?’

R: ‘Ja, ik heb iemand, die had bijna zelfmoord gepleegd, bijna. Normaal gesproken kan die nooit in aanmerking komen om een soort reiniger op de unit te worden. Die voldoet niet aan de voorwaarden. Hij heeft rapport, hij heeft op de ISO gezeten. Toch heb ik wel de uitzondering gemaakt, om te kijken of hij echt iets aan zijn gedrag kan veranderen. En dat werkt! Maar als ik de voorwaarden strikt had toegepast, dan zou ik er nooit achter zijn gekomen of hij daadwerkelijk zijn gedrag kan veranderen. (...)’

I: ‘En hoe wordt dat opgepakt? Hoe gaan zij [de gedetineerden] daar mee om?’

R: ‘Ja, dan zeggen ze: waarom krijgen sommigen meer voor elkaar als de anderen. En eh, dan vaak leg ik het uit en dan zeg ik: van ja, die heeft naar onze adviezen geluisterd en dan bereikt hij meer dan jij. Als jij blijft stuiteren en blijft vloeken, dan kun je niks bereiken.’ (M7)]

#### *4.1.3. Experiences of inequality*

The discretionary powers of prison officers creates the opportunity to assign privileges to one prisoner or category of prisoners and strictly apply the rules to another. They use this power to reward good behaviour, but also to punish prisoners informally who, according to them, do not correctly behave. Prisoners can perfectly justify this flexibility when it is to their advantage or to the advantage of the group to whom they belong. This is shown in the following examples:

I: ‘You say that if you have good relations with the chefs, they may be willing to make an extra call in case you forgot to apply for a visit. But if they are willing to make that extra effort, on what does that depend? Do they make an exception for everybody?’

R: ‘No, not for everybody, I don’t think so. If they have to do that for everybody, they will leave it. And I will also not tell somebody else: if you have a problem, tell that to the chef... no the chef won’t appreciate that either. But I have already been here for two years, I work, they know me. I am always very friendly and if I need anything, they help me.’ (G10)

[I: ‘Je zegt als je goede contacten hebt met een chef dan doen ze dat eens bellen van ja ik ben een bezoek vergeten aan te vragen, maar waar hangt het van af of ze wel of niet gaan doen om het alsnog te regelen? Even een uitzondering maken doen ze dat voor iedereen?’]

R: ‘Nee, niet voor iedereen, ik denk het niet. Als ze het voor iedereen moeten doen stoppen ze ermee. Ik ga ook niet zeggen tegen iemand anders: als je een probleem hebt, dan moet dat tegen die chef zeggen en dan zegt die chef ook, nee, zo werkt het niet. Nee dat doet ok niet, maar ik werk, ik ben hier al twee jaar, die kent mij. Ik ben altijd vriendelijk, altijd als ik iets nodig heb die helpen mij en zo.’ (G10)]

R: ‘We have more contact with the prison officers than other prisoners. We meet them all day, you can’t compare us with the other prisoners. They meet the chefs only during open-air activities, recreation, sports, but not on other opportunities. They can also ask the chef to have chat with them in case there are any problems or anything, but you can’t compare them with us.’ (G19)

[R: *‘Wij hebben meer contact met de cheffen dan de andere gedetineerden. Wij zien de cheffen dag in, dag uit en dat kun je niet vergelijken met de andere gedetineerden. Die zien de cheffen enkel maar tijdens de lucht, tijdens de recreatie, tijdens de sport, maar anders niet. Als ze komen vragen om eens met de chef te willen vragen of als er problemen zijn of zo, dat kunnen ze ook doen. Maar je kunt het niet vergelijken zoals bij ons.’* (G19)]

It is more difficult for prisoners, however, to accept differences and individualization in cases where other prisoners gain from them. Many negative experiences are reported, in particular concerning the assignment of cleaning jobs. ‘Cleaning jobs’ are very important to prisoners and prison staff. They give prisoners more freedom (because they can move around freely through (parts of) the prison), privileges and sometimes money. From the perspective of the staff, cleaners need to be reliable, because of that freedom to move around and because they often fulfil a bridge function between prisoners and staff. Prisoners consider the assignment of cleaning jobs as a subject of preferential treatment and they report some fairly negative experiences.

I: ‘And the prison officers, do you have a feeling that they give preferential treatment to certain people?’

R: ‘Yes, the “fatik”<sup>48</sup> do, but that is normal because they are their servants. Fatik is a word that means bastard or servant. The servant of the prison officers, you see. So you have to treat your personnel well if you want them to go through fire for you. I would do the same thing.’ (G29)

[I: *‘En de PIW-ers, heb je het gevoel dat zij soms bepaalde mensen voortrekken?’*

R: *‘Ja, de fatik wel, maar da’s normaal, dat zijn hun knechtjes. Fatik is eigenlijk een woord dat: het is bastaard betekent, knecht. Knecht van de chefs, snap je. Dus je moet uw personeel goed behandelen als je wilt dat ze door het vuur gaan voor u, dat zou ik ook doen.’* (G29)].

Besides, prisoners who do not speak Dutch do not gain as much from the Dutch chat culture as Dutch/Flemish-speaking detainees and they are less subjected to such an individualized approach. These prisoners were generally less positive about their stay in Tilburg Prison than the other detainees. This is illustrated by the following quote in which a French-speaking prisoner reflects on his opinion about the general attitude of the staff.

I: And the rules here, are they are applied correctly? For example, the staff... do they follow the rules?’

A: ‘Yes. Rigidly and very straight to the point. Because you are entitled to it, you are entitled to it. It is very... too rigid, because sometimes, for example: I was cleaning a pan, and then he insulted me “Goddamnit” because I did not go back to my cell immediately. All of this because of two minutes... I forgot to clean the pan, I wanted to do it quickly before I went to my cell. Screaming and all that and I tried to delay things...’ (G15)

All prisoners – both Dutch/Flemish and non-Dutch/Flemish-speaking prisoners – agreed that the latter were greatly disadvantaged compared to prisoners who could make themselves understood.

I: ‘And do you have the feeling that everybody is being treated in the same way?’

R: ‘No, I wouldn’t say so.’

I: ‘What makes a difference?’

R: ‘What makes a difference? Yes, if you are French-speaking, do you know a Dutchman who speaks French? [laughs] Start to look, eh! I see it with my own eyes daily in the isolation unit. Even the doctor does not speak French. When I am cleaning there and the doctor visits people who are in isolation, if they are French-speaking, then the doctor cannot talk to them.’ (G32).

---

48 This means cleaner in Flemish.

**I:** 'En heeft u het gevoel dat iedereen hier op een gelijke manier wordt behandeld?

**R:** 'Nee. Da ook weer niet.'

**I:** 'Wat maakt het verschil?'

**R:** 'Wat maakt het verschil. Ja, als je Franstaling bent, welke Hollander praat Frans [lacht]. Begin maar te zoeken hè. Zelfs den dokter niet. Den dokter die kan nog geen Frans. Ik zie het met mijn eigen ogen dagelijks in de ISO. Als ik daar aan 't poetsen ben, komt de dokter op bezoek bij de mensen die in het cachot zitten, in de isolatiecel en als dat dan Franstalige jongens zijn, die dokter kan daar niet mee praten.' (G32)]

This lack of understanding leads to permanent disadvantages, as is illustrated by a simple example of one of the prisoners. This shows the inequality as a result of the individualized approach of the Dutch prison staff.

**I:** 'What do you think of?'

**R:** 'Everything actually. You speak the language. Well, they have just implemented that... in the past, too much bread was given to prisoners. Then they said: we are giving you only half the bread which we usually give you. But if you need more bread, you can ask for it. Then they take bread out of the freezer and we all have a microwave in our cell. Only asking for bread. Please, can I get some more bread? Yeah that boy, he can't do it. He doesn't speak Dutch. When the doctor came. He prescribed him some medication and he explained that to the prison officer. Then, there must be an interpreter who can explain that to him.' (G17).

**I:** 'En waar denkt u dan aan?'

**R:** 'Over alles eigenlijk. Je spreekt de taal. Nou hebben ze pas ingevoerd... vroeger werd er teveel brood gegeven. Wat hebben ze toen gezegd: wij geven jullie nog de helft van hetgeen jullie kregen. Maar als je meer nodig hebt kan je dat vragen. Dan wordt er brood uit de diepvries gehaald en we hebben allemaal een microgolfoven op de cel. Alleen al dat vragen om brood. Zou ik alsjeblieft brood mogen krijgen. Ja die jongen, die kan dat niet. Die spreekt geen Nederlands. Of de dokter is geweest. Die heeft medicatie voorgeschreven en dat probeert de bewaker uit te leggen. En dan moet die altijd een tolk hebben die hem dat gaat uitleggen.' (G17)]

#### 4.1.4. Getting things done

The individualized approach contributed to the possibilities of prisoners getting things done, defined as organizational respect by Hulley et al.<sup>49</sup> This possibility positively influences the quality of prisoners' prison life, as shown in the following example.

**I:** 'Yes, do you have the feeling that you are treated with respect by the staff?'

**R:** 'Yes, in general I have'

**I:** 'And why do you have that feeling? Can you give an example?'

**R:** 'If you ask anything, they normally do it immediately or they say: yes, we will let you know. Or, for example, I have to hand out some clothes, then they say: yes, wait a minute we will call directly. And then they do call and come back to you and say: Yes you can come. If you ask anything, it usually happens directly.' (G26)

**I:** 'Ja, hebt ge het gevoel dat ge ook met voldoende respect benaderd wordt door het personeel?'

**R:** 'Ja, over het algemeen wel.'

**I:** 'En waarom vindt ge dat. Kunt ge daar voorbeelden van geven?'

**R:** 'Ja als ge iets vraagt, gebeurt dat meestal direct of ze zeggen: ja, we laten u iets weten, of ik moet bijvoorbeeld kleren uitgeven en dan zeggen ze: ja, wacht we gaan direct bellen. En dat gebeurt dan

---

49 S. Hulley, A. Liebling & B. Crewe, 'Respect in prisons. Prisoners' experiences of respect in public and private sector prisons', 2012 *Criminology & Criminal Justice* 12, no. 3, pp. 3-23.

*ook dat ze direct bellen en nadien komen zeggen. Ja, kom maar naar bad. Ja, als ge iets vraagt, dan gebeurt dat direct ja.'* (G26)]

## 5. Discussion

We started this contribution with the observation that 'neutrality' is scarcely defined in the literature on procedural justice, even though it is considered a key element to accomplish legitimacy in correctional institutions.<sup>50</sup> So far, Tyler defines neutrality in the context of procedural justice as the extent to which decisions are based on a consistent application of the rules, instead of the personal opinions of prison officers. However, in general prison literature, it is recognized that an individualized treatment contributes as much to prisoners' experiences of fairness as a consistent application of the rules. This tension between consistency and individuality has been addressed in this contribution since the desire for a consistent application of the rules can strongly oppose the equally important desire of prisoners to be treated in an individualized way.

The importance of both consistency and individuality is confirmed by prisoners and prison officers at the Dutch Tilburg Prison who participated in the study on which this contribution is based. Generally, Belgian prisoners were – despite their primary resistance – surprisingly satisfied about their stay in Tilburg Prison which might to a large extent be explained by the ability of the Dutch prison staff to strike a balance between consistency, on the one hand, and individualized treatment, on the other. Both prisoners and prison staff consider consistency with the rules to be a particularly important element to accomplish fairness in prison, but they do agree that life in prison becomes difficult without exceptions to these rules. Prison officers are convinced that the situation in prison will be 'unworkable' in terms of order and fairness if they have to apply the rules equally across prisoners and across time, and therefore, they use their discretionary powers to create a good working environment. Prisoners do accept and even appreciate these exceptions to a certain extent since such an individual approach by prison staff creates the opportunity to get things done during their imprisonment. However, individualized decisions lead to strong expressions of disapproval if these are purely based on the personal preferences of staff members – for example, by the assignment of cleaning jobs – and/or unfair criteria like an inability to understand the Dutch language.

In how far can these results be of any relevance to the general literature on procedural justice? Well, it has to be admitted that the situation in prison differs a great deal from the situation in which a third party has to decide about a conflict between two other parties and also from the situation in which civilians are confronted with the exercise of power by a third party with whom they do not have any other relationship. Most of the procedural justice literature is based on one of these two situations and not on the situation in which two unequal parties are in a semi-permanent relation to each other. Tyler, however, does recognise situations in which people do value a long-term relation with the decision-maker.<sup>51</sup> In these cases, he considers that the procedural element of the decision – including neutrality – is of even more importance than in 'normal' situations compared to, for example, the outcome element. On the other hand, he states that people attach more importance to bias suppression and consistency in formal situations, while the quality of the decisions is considered to be of greater importance in more cooperative situations.<sup>52</sup>

Our study shows that both individualized decision-making *and* exceptions to the rules are considered as necessary elements of prison life by both prisoners as prison officers, besides the importance of bias suppression and a consistent application of the rules. This slightly different balance might be due to the more intense relationship between prison officers and prisoners compared to other authority relations and prisoners' awareness of correct and former decisions.<sup>53</sup> The semi-permanent relationships between

50 T. Tyler, 'Legitimacy in corrections: Policy implications', 2010 *Criminology & Public Policy* 9, no. 1, p. 130.

51 T. Tyler, 'The Psychology of Procedural Justice: A Test of the Group-Value Model', 1989 *Journal of Personality and Social Psychology* 57, no. 5, pp. 830-838.

52 T. Tyler, 'What is procedural justice? Criteria used by citizens to assess the fairness of legal procedures', 1988 *Law and Society Review* 22, no. 1, p. 107.

53 S. Hulley, A. Liebling & B. Crewe, 'Respect in prisons. Prisoners' experiences of respect in public and private sector prisons', 2012 *Criminology & Criminal Justice* 12, no. 3, pp. 3-23.

prison officers and prisoners increase the impact of these officers' decisions on prisoners and intensify the need for exceptions to the rules. The prison officers' decisions are under the microscope as other prisoners are likely to become aware of the outcome thereof and apply them to their own situation. As a result, neutrality in the context of prison life means that rules should be consistently applied, but that exceptions to the rules are justified as long as such individualized decisions are neutrally applied – i.e. apart from the personal opinions of the decision-makers and based on fair criteria – and do not result in unexplainable and/or unequal differences among prisoners. This means that both a fair procedure and an equal outcome are important in the context of prison life in order to bring about fairness.

It is known that the use of discretionary powers and the choice to make exceptions is an interpretative process,<sup>54</sup> but the study in the Dutch Tilburg Prison shows that prison officers have great difficulty in defining in which situations exceptions to the rules are justified. Their stories reveal that there is a large 'grey zone' in which they use their experience and their gut instinct to determine whether an exception to the rules should be made. This affects especially those prisoners who have difficulties in communicating with Dutch prison staff because they do not speak Dutch and who consequently face difficulties in benefiting from the individualized approach of the Dutch prison officers. Besides, the use of an individual approach by prison officers may result in some prisoners gaining over other prisoners. This creates inequality in prison and impacts the prisoners' perceived fairness. This shows – as is also argued by Liebling – the importance of staff professionalism to bring about legitimacy in prison. Such professionalism may prevent the privileged treatment of prisoners.<sup>55</sup> Prison officers should be capable of maintaining good but not too close relationships with prisoners and should rather lean on the use of their authority, than on strictly applying the rules. They also need to be able to use their discretionary powers in a fair manner, setting and monitoring limits, protecting and supporting prisoners, and respecting them.<sup>56</sup> Besides, they should have a positive attitude towards rehabilitation.<sup>57</sup> The relatively good level of education among Dutch prison officers compared to Belgian prison officers may have contributed to the relatively high appreciation of the Dutch staff by Belgian prisoners. Despite the formerly poor reputation of Tilburg Prison among Belgian prisoners and their resistance to be transferred to this prison in the Netherlands, the prisoners turned out to be rather satisfied with their detention conditions in this prison.

These findings give us – in the light of this special issue of the *Utrecht Law Review*<sup>58</sup> – the opportunity to draw upon the relevance of the literature on procedural justice in the context of prison life. So far, there is no consensus on the relative weight of both distributive and procedural justice in prison. Tyler draws the conclusion, for example, that procedural justice is of more importance than distributive justice in correctional institutions,<sup>59</sup> Franke et al. stress that broader aspects of the prison regime itself bear more heavily on prisoners' attitudes towards authority than procedural or distributive justice,<sup>60</sup> and Hulley et al. stress that the distinction between process and outcome is less clear in prison since also 'getting things done' is – regardless of the answer to the question or request – considered a successful outcome.<sup>61</sup> This study shows that both distributive and procedural justice are regarded as important by prisoners. Prisoners accept and encourage exceptions to the rules, but have much more difficulties with them when they do not benefit from them themselves. This is in particular true when these exceptions are based on criteria which are unclear or perceived to be unfair. ¶

---

54 A. Liebling, *Prisons and their Moral Performance. A Study of Values, Quality, and Prison Life*. 2004, p. 261; A. Liebling, 'Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited', 2011 *European Journal of Criminology*, 8, no. 6, pp. 484-499.

55 A. Liebling, 'Distinctions and distinctiveness in the work of prison officers; legitimacy and authority revisited', 2011 *European Journal of Criminology* 8, no. 6, p. 496.

56 B. Crewe, A. Liebling & S. Hulley. 'Staff-Prisoner Relationships, Staff Professionalism, and the Use of Authority in Public- and Private-Sector Prisons', 2014 *Law & Social Inquiry*, DOI: 10.1111/lsi.12093; B. Crewe, A. Liebling & S. Hulley. 'Staff culture, use of authority and prisoner quality of life in public and private sector prisons', 2011 *Australian & New Zealand Journal of Criminology* 44, no. 1, pp. 94-115.

57 K.A. Beijersbergen, A.J.E. Dirkzwager, T. Molleman, P.H. van der Laan & P. Nieuwebeerta, 'Procedural justice in prison: The importance of staff characteristics', 2013 *International Journal of Offender Therapy and Comparative Criminology*, DOI: 10.1177/0306624X13512767.

58 2014 *Utrecht Law Review* 10, no. 4.

59 T. Tyler, 'Legitimacy in corrections: Policy implications', 2010 *Criminology & Public Policy* 9, no. 1, pp. 127-134.

60 D. Franke, D. Bieri & D. Layton Mackenzie, 'Legitimacy in corrections, a randomized experiment comparing a boot camp with a prison', 2010 *Criminology & Public Policy* 9, no. 1, pp. 89-117.

61 S. Hulley, A. Liebling & B. Crewe, 'Respect in prisons. Prisoners' experiences of respect in public and private sector prisons', 2012 *Criminology & Criminal Justice* 12, no. 3, pp. 3-23.