

Title

I know what to expect: The impact of previous experience on legal empowerment

Abstract

Increasing legal empowerment is a key objective of governments and justice systems worldwide. Consequently, the impact of judicable events on legal empowerment is a question of some significance. Subjective Legal Empowerment (SLE) is a measure of legal empowerment based on individual perceptions. SLE is based on Bandura's theory of self-efficacy. In this study, a sample of over 500 respondents from a Dutch legal assistance clinic were asked about their prior experience of legal conflicts, and completed measures of SLE in relation to a range of legal domains. The results show that previous experience of legal problems results in lowered SLE ratings across a range of different domains, regardless of success/completion of these problems, and that experience within specific legal domains results in significantly lowered empowerment ratings for future problems of that nature. The implications for both the measurement methodology and for the future design of legal procedures are examined.

Introduction

Legal empowerment has become a focus of many governmental and supra-governmental organisations (American Bar Association, 1994; Asser, 2008; Commission on Legal Empowerment of the Poor, 2008; De Langen & Barendrecht, 2009; Finlay & Regan, 2007; Programme, 2005; Van Rooij, 2007). As a result, it is important that we understand what factors affect legal empowerment, and one of the more commonly cited factors is prior experience of the legal system (Commission on Legal Empowerment of the Poor, 2008).

There are many challenges to measuring legal empowerment, including the focus on individuals who have used legal processes (who are almost certainly more 'empowered' than those who do not), or who are in legal processes (where assessments are likely to be biased strongly by the particular circumstances of the problem they are experiencing). A strength of SLE as a measure of legal empowerment is that it does not rely on current or previous experience of legal processes. Accordingly, SLE is used here to examine the effect of previous legal experiences on levels of legal empowerment.

Tilburg Rechtswinkel (TRW) was founded in 1969. It is staffed by volunteer law students and provides free legal assistance to citizens of Tilburg. It receives funding for this from a variety of sources, including Tilburg Council and direct donations from the public. In order to gain some insight into the services that are provided, and the impact that they have on service users, TRW teamed up with Tilburg Institute for the Interdisciplinary Study of Civil Law and Conflict Resolution Systems (TISCO) to conduct research into the views and experiences of users of the TRW. In particular, there was an examination of users prior legal experience, and the extent to which this impacted upon their SLE ratings.

Subjective Legal Empowerment (SLE) is a concept that is being explored as a method of measuring legal empowerment (Gramatikov & Porter, 2011). It uses Bandura's theory of self-efficacy (Bandura & Adams, 1977; Bandura, 1977, 1982a, 2005) to build up a picture of an individual or community's perceived ability to solve a legal problem through confidence ratings. Measurement is made at both a domain level (in relation to a particular type of problem, for example an employment problem), and also at a task-specific level (in relation to specific tasks that need to be completed to solve a problem) (Bandura, 1977; Gramatikov & Porter, 2011). Information regarding individual's self-efficacy ratings is gathered from 4 sources; Prior Experience, Vicarious Experience, Affective State, and Verbal Persuasion. These four information sources combine to form and individual's belief in their ability to complete a task (Bandura, 1982a, 1982b).

The ratings given by individuals to their ability to solve the problem (the domain level) and their ability to complete different tasks in pursuit of a solution (the task-specific level) have been demonstrated to be distinct from one another. This means that individuals rate their ability to solve different types of legal problem differently, as well as their ability to complete individual tasks in pursuit of that goal differently, dependent on both the domain concerned, and the task presented.

Of the four sources of information for self-efficacy theory, the most influential of these is enactive mastery (Bandura & Adams, 1977; Bandura, 1982a). Having prior experience of attempting to complete a task is the most powerful source of

information regarding this task (although self-efficacy ratings are better predictors of actual behaviour than prior behavior (Bandura, Adams, Hardy, & Howells, 1980; Bandura & Schunk, 1981; Bandura, 1982c)) and so prior experience of legal problems can be expected to impact upon SLE.

While self-efficacy measures were first composed in relation to very simple tasks (for example lifting a certain weight) (Bandura, 1977), and proved to be extremely accurate predictors of future behaviour, there is a collection of evidence that self-efficacy measures are predictive of behaviour in relation to increasingly complex tasks (Compeau & Higgins, 1995; D. H. Schunk et al., 2002; Stajkovic & Luthans, 1998). To address complex tasks, multi-dimensional self-efficacy measures are needed (Lent, Brown, & Larkin, 1987), which, while they have lower correlations between the measure and performance, do not eliminate the relationship itself.

Jorgensen and Torpman (Jørgensen & Torpman, 2006) looked at legal behaviour and perceptions of ability in relation to business conflicts among financial managers. Through the work of Jorgensen on this topic (Jørgensen & Svanberg, 2009; Jørgensen & Torpman, 2006; Torpman & Jørgensen, 2005), the theory of self-efficacy is applied to managers who make decisions to either pursue a legal solution to company conflicts, or not. In their research, they find that there is a link between self-efficacy ratings, and anticipated future behaviour (or statements of intent). This is supportive of a model of SLE that uses self-perceptions as a basis for predictions of future behaviour.

Prior experience has also been examined before in the context of legal problems. Gallagher and Wang (2011) found that Chinese citizens could be either 'encouraged' by their legal experiences, or made more despondent. They concluded that these different reactions were attributable to differences in legal and political identity:

“Older, urban disputants employed in the state sector are more prone to feelings of disillusionment, feelings of powerlessness, and inefficacy. Younger, rural disputants employed in the non-state sectors are likelier to have positive evaluations of their legal experience and to embrace the legal system as a potential space for rights protection.” (M. E. Gallagher & Wang, 2011, p. 205)

In comparison, Buck *et al* (2004) found that lone parents were more likely to experience legal problems and to seek legal assistance to solve them. However, there was no examination of their perceived likelihood of achieving an outcome to their problems, or whether these individuals were more confident than others. In fact, little work has been done to examine the impact of prior experience on anticipated outcomes. However, self-efficacy theory promotes the idea that prior experience will impact upon confidence of achieving a solution in the future. It is thus of interest to examine how prior experience of legal problems impacts upon SLE for future problems.

Thus a set of hypotheses is created that will be tested in this paper.

Hypothesis 1a: It is expected that there will be a significant difference in SLE ratings between groups with/without experience of trying to solve a legal problem.

Hypothesis 1b: Further, it is anticipated that prior experience will create significantly higher SLE ratings, due to the impact of enactive mastery upon self-efficacy ratings.

Hypothesis 1c: Achieving a solution to a prior problem will create higher SLE ratings.

Hypothesis 2a: It is expected that prior experience of a particular type of problem will create differences in SLE ratings for that type of problem

Hypothesis 2b: It is anticipated that domain-specific prior experience will be a significant predictor of domain-specific SLE ratings for that problem type.

Methods

The Measure

The data collection for this study used quantitative methods. The data collection took place through a questionnaire implemented with clients of the Tilburg Rechtswinkel¹. These questionnaires were collected over 18 months between October 2011 and April 2013. The questionnaire consisted of two sections. Firstly there was a legal history section examining prior experiences with legal problems (defined as a problem that could have a legal solution, regardless of whether legal means were used in its (attempted) resolution). This section looked at what type of problems had been encountered over the last 3 years, how these problems affected the respondents, what action they had taken or attempted to take, and the situation of the problem now. From this a clear picture of prior legal experience was built. The second section consisted of a measure of SLE which examined 6 problem domains (Gramatikov & Porter, 2011): Employment, Family, Neighbour, Land, Business and Crime.

Sample

All individuals who attended the Tilburg Rechtswinkel for services were asked to complete the questionnaire. The questionnaire was offered in both Dutch and English to facilitate completion by a wider number of respondents. It should be noted that a very small number of individuals did not complete the questionnaire due to an inability to read Dutch or English. This data collection produced a sample of 538 respondents. Respondents varied in age from 19 to 85, with a mean of 48.8 (SD=16.80), and a perfectly even gender split. Respondents came to the Rechtswinkel to report a problem in one of 5 areas, with frequencies as shown in Table 1.

Table 1: Problem Areas

As with all sampling methods, the method selected is prone to some biases. The first, and most obvious, is that these individuals are in fact those who have approached the Rechtswinkel, i.e. those who have attempted to solve their problem. This could be interpreted in two ways, either as indicating a higher than average level of legal empowerment, or a lower than average. If you consider these individuals to be part of the group who seek out help to obtain a remedy to their legal problems, then you may think of them as having higher than average legal empowerment. On the other hand, these are individuals who are approaching a free legal service, staffed by students, with limited ability to represent them formally. From this perspective, they can be considered individuals with lower than average legal empowerment.

Whichever perspective is taken, it would be expected to have a minimal impact upon the objectives of this study. As we are looking at the impact of prior experience, the

¹ Copies of the questionnaire are available upon request from the corresponding author

overall mean being lower or higher than the ‘true’ average of the population should not make a large difference. It may be that there is some impact in terms of these individuals’ success rates in previous cases. If the sample is less legally empowered, it may be that they are less likely to have been successful in their prior attempts to solve their legal problems, and vice versa. This would likely impact upon their future legal empowerment (if they were successful, we would expect their legal empowerment to increase, if they were unsuccessful, to decrease), however the success of prior cases is taken into account in later analyses to account for this bias as far as is possible.

Results

Hypothesis 1a: It is expected that there will be a significant difference in SLE ratings between groups with/without experience of trying to solve a legal problem.

Hypothesis 1b: Further, it is anticipated that prior experience will create significantly higher SLE ratings, due to the impact of enactive mastery upon self-efficacy ratings.

The first analysis carried out was to examine whether there were overall differences in SLE depending on whether individuals had experienced a legal problem or not. The results of an independent sample t-test can be seen in Table 2. Overall SLE ratings (created by finding the mean SLE rating across all 6 domains) are significantly higher in the ‘No prior experience’ group than it is in the ‘Prior experience’ group. This supports hypotheses 1a, as there is a significant difference between the ratings of these groups. However, the data goes directly opposite to the direction anticipated in hypothesis 1b.

Table 2: Overall SLE ratings between Experience groups

Following this finding, an ANOVA was carried out to determine whether the number of prior legal problems faced had an impact on SLE levels. The results showed a significant difference at the $p < 0.05$ level between the 5 groups (from no experience to 4 previous experiences) ($F(3,295) = 3.338, p = 0.020$), with a larger number of problems producing a lower SLE value. Post hoc analysis through a Tukey B test produced only one subset as shown in Table 3.

Table 3: Tukey B homogeneous subsets²

Further analyses was carried out at the domain-specific SLE level, and the results of these can be seen in Table 4. This data also supports hypothesis 1a, as there are significant differences between experience groups in three of the domains, but runs counter to hypothesis 1b, as those with prior experience produce *lower* domain-specific SLE ratings.

Table 4: Domain Specific SLE Ratings between Experience Groups

Hypothesis 1c: Achieving a solution to previous legal experiences will create more positive SLE ratings

Those who had experienced a problem were also asked about the outcome of the problem (is it solved or not), and this was used as a grouping variable in an

² The group of individuals who experienced 4 problems was excluded, due to the low N (2) for this group.

independent samples t-test to examine for differences in SLE ratings³. Table 5 shows the results of this analysis.

Table 5: Overall SLE ratings split by success in solving previous problems

As can be seen, no significant difference was found. This does not support Hypothesis 1c. However it can be seen that those whose problems were solved gave higher SLE ratings than those whose problems had not been solved. Table 6 shows the results of t-tests carried out within each legal domain. As can be seen, although there are no significant differences, in each case those whose previous problems were solved, rated their chances of getting a solution higher than those whose previous problem had not been solved.

Table 6: Effect of outcomes of prior problems on SLE ratings

Hypothesis 2a: It is expected that prior experience of a particular type of problem will create differences in SLE ratings for that type of problem

In order to further examine the effects of experience on SLE, difference in scores were examined at a domain-specific level. As we can see in Table 7, examining the scores based on whether specific problem types have been experienced supports hypothesis 2a. Here, significant differences are found in domain-specific SLE ratings dependent on prior experience of employment, family, neighbor, and land problems (with prior similar experience groups having lower SLE ratings than those with no prior similar experience), although no significant differences were found dependent on experience of business disputes or crime. It is also noticeable that prior experience of legal problems also appears to operate around the mid-point of 3 (Neither likely nor unlikely to achieve a solution), with those who had experienced a problem having a mean score below this point, and those who did not have experience of legal problems scoring above it.

Table 7: Domain Specific SLE Ratings between Similar Experience Groups

Analyses were also carried out to see if there were differences between success or failure at solving a domain-specific problem affected the domain-specific SLE ratings. No significant results were produced.

Hypothesis 2b: It is anticipated that domain-specific prior experience will be a significant predictor of domain-specific SLE ratings for that problem type.

In order to test hypotheses 2b, a set of step-wise linear regressions were carried out within each domain. In each regression, prior experience of a legal problem, the number of prior problems, and whether the last problem was solved were entered into the regression at the first step to control for the effects they might have on domain specific SLE. Specific experience within the relevant domain was then entered in the second step. The results of these analyses, with standardized beta values, significance values, and r^2 values for the models, are presented in Table 8.

Table 8: Step-wise regressions within specific legal domains

³ For individuals with more than one problem, the most recent problem was used for these purposes.

As can be seen, for employment, family, neighbour and land problems, specific prior experience is the only significant predictor of domain-specific SLE entered in the model, while none of the entered variables predict business or crime domain-specific SLE.. It is also noticeable that the proportion of variation that is accounted for is low, with family problems having the highest with 5.4% of variation accounted for, and land the lowest, with 1.4% of the variation. However, due to the sub-division of the sample into problem-specific groups, the cell numbers in some regressions become relatively small, reducing the power of the statistic and making Type II errors more likely.

A further regression was carried out with a dependent variable of overall SLE rating, and using the same independent variables (excluding specific prior experience). None of the independent variables significantly predicted overall SLE ratings.

Discussion

The results above present a mixed picture in relation to the hypotheses that were set out at the start of this paper. Overall, it is difficult to make any general conclusions about the effect of prior experience on subjective legal empowerment. There are, however a few points that are worth discussing in greater detail.

Hypothesis 1a

The hypotheses that different levels of experience would create differences in SLE ratings is supported by this data and analysis. There is a clear difference between overall SLE ratings for those with prior legal experience, compared to those who had no prior legal experiences.

There is an indication that the overall relationship between experience levels and SLE ratings is a linear one. The ANOVA conducted indicated that there are significant differences between at least two of the groups, and the Tukey B post-hoc test (Table 3) indicates that as the level of experience increases (measured in the number of previous problems), the SLE rating decreases. However, there is only one subset within the groups, so it is not possible to draw strong conclusions about the relationships between the four groups.

Further analysis at a domain-specific level also supports hypotheses 1a, in that there are differences between those who have prior legal experience and those that do not, however this is not consistent across all of the domains, with employment, business and crime domains demonstrating no difference between the two groups.

Hypothesis 1b

The results to the tests of hypothesis 1b ran entirely counter to the hypothesis. This means that those with greater experience of legal problems exhibit *lower* SLE ratings. They become less confident in their ability to solve legal problems. This is true in relation to overall SLE (Table 3) and in relation to 3 of the 6 specific domains (Table 4).

The perceived wisdom would be that experience would make individuals more confident in their ability to manage legal problems. However, this is clearly not the case, and there are a number of potential explanations for this. Firstly, it is possible that exposure to legal processes (or attempts to solve legal problems by other means)

simply highlights the difficulty inherent in solving these problems. If this were the case, we would expect to see an increase in SLE in those who were successful in solving their legal problems (to whom it was highlighted that it was possible), and a decrease in those who were unsuccessful (to whom it was demonstrated that the difficulties were insurmountable). However, as we see in relation to hypothesis 1c, this is not the case.

A second explanation relates to attribution theory. When individuals gain experience of a particular task, the impact this experience has on their self-efficacy is moderated by where they attribute the cause of the outcome (Chambliss & Murray, 1979). At its most basic, attribution for the outcome can be internal (caused by the individual) or external (caused by things outside of one's direct control), and the corresponding effect of the outcome on self-efficacy is correspondingly high (if internal) or low (if external).

Using this theory, we would think that if individuals attributed the cause of the outcome to external actors outside of their control, the effect on their SLE would be minimal. However, this would result in no difference between those with and without experience. Contrary to this, we see in Table 2 and 3 that the SLE of individuals with experience is lower than those without experience. This might be explained however, by taking into account that an experience highlighting the 'external' nature of the process reduces SLE by virtue of the fact that individuals feel they can have no effect on the outcome.

While this might explain the results here, it represents a severe criticism of the legal system as experienced by these individuals. The question asked to obtain SLE ratings is 'Please indicate how likely you think you would be to get a fair solution if you...[enter variation e.g. had a conflict with your employer]'. If we think about these responses being reduced because individuals find that they have no control over the process or outcome, it leads to the conclusion that individuals feel that the outcomes to legal processes are not only outside of their control, but also to an extent arbitrary.

If we take the case of an individual who feels that they have no control over the legal process, but that it yields consistently fair results, we can see that their response to this SLE question would likely remain consistent (or perhaps even increase) following the affirmation of their finding through practice ("The outcomes the processes produce are fair, even if I cannot control them. So my chances of a fair outcome are good, even if I cannot control the process."). However, what we find is that individuals feel that their chances are lower than they thought they were.

If the attribution approach is taken to explain this difference, we find that legal processes are experienced as both outside of an individual's control, and arbitrary.

Hypothesis 1c

Further to the findings in relation to hypothesis 1b, we find in tables 5 and 6 that there are no significant differences in SLE ratings between those who were successful in solving their problem and those who were not. This is true both at an overall SLE level, as well as on domain-specific SLE ratings. However, it can be seen that in all cases, the average SLE ratings were higher for those who successfully solved their problems.

The fact that the success or otherwise in reaching a solution does not seem to produce significant differences in SLE ratings is surprising. Success would be expected to increase legal empowerment, while failure to solve previous legal problems would be expected to reduce legal empowerment. Again, we can look to attribution theory for an explanation here. For an experience to successfully impact on self-efficacy, it is necessary that the attribution for the outcome is made internally. Here we can perhaps see a reflection of the possible explanation put forward in relation to hypotheses 1b, that individuals do not attribute their success or failure in legal conflicts internally, but rather consider that it lies outside of their control.

The consistently higher SLE ratings within domains for those who had been successful in solving their problem seen in Table 6 may indicate that there is some internal attribution of the success, however the lack of significant differences indicate that this may be due to sampling or measurement errors, rather than reflection of a real-world effect.

Hypothesis 2a

This hypothesis was supported by the data for the most part. Of the six domains examined, the presence or absence of domain-specific prior experience produced significantly different domain-specific SLE ratings in 4 domains (Table 7). The two domains where no differences were found, were business problems and crime. These two domains also produced no differences in overall SLE dependent on prior experience of any legal problem, and the same reasoning can be used here to suggest that success or failure to achieve a solution in these domains is outside of the control of the individual, and so neither general nor domain-specific prior experience affect SLE in relation to these problems.

The fact that domain-specific prior experience creates a significant difference in domain-specific SLE for employment problems is interesting, especially given the lack of any difference created by general prior experience (Table 4). This indicates that employment problems are viewed as a relatively 'specialised' category by respondents. Specific experience of these types of problem causes changes in SLE, while general experience of any legal problem does not. This is distinct from the remaining 3 domains examined (family, neighbor and land problems), where general prior experience of legal problems as well as domain-specific experience creates a difference in domain-specific SLE.

Hypothesis 2b

This hypothesis was broadly supported by the regression analysis carried out. Of the 6 domains examined, domain-specific prior experience was the sole predictor of domain-specific SLE scores in 4 of them (employment, family, neighbor and land problems). In the other two domains (business problems and crime) none of the entered variables were significant predictors of domain-specific SLE.

This highlights that business and criminal problems appear to have (the absence of) specific characteristics which cause this difference. A possible characteristic is the 'formal' or perhaps established nature of these problems. The processes for solving business and criminal problems are typically well known in advance. In the case of criminal problems, reporting to the police and the subsequent investigation and potential prosecution are all carried out in a very structured manner. This is also likely

true for business cases, where the procedures for resolving business disputes are often laid out in contracts prior to the problem arising, and where the process is often handled through professional agencies. This characteristic is less apparent for the other four domains. However it would be expected that employment cases would have a similar characteristic, but this is not borne out by the findings.

A second explanation might be in relation to the relative 'predictability' of outcomes in these domains. Where an outcome is more predictable, experience of these problems may not cause a difference in SLE ratings, as the likelihood of receiving a fair outcome is simply borne out by the experience, neither increasing nor decreasing SLE ratings.

Whichever interpretation is adopted, it is interesting to note that these regression analyses included the presence or absence of any prior legal experience, the level of prior experience (in terms of numbers of problems encountered), and the success or failure in relation to any problems encountered. None of these variables significantly predicted domain specific SLE at all. Further, a regression using overall SLE produced no significant predictor variables.

This supports the hypotheses set out, but also indicates that general legal experience is not a good predictor of legal empowerment levels regardless of the success or otherwise of that prior experience. However, it appears that domain-specific experience may be a better predictor of legal empowerment levels within that domain. However, the predictive ability of domain-specific experience is still very low, accounting for just 5.4% of variation in SLE levels in the best case, and dropping as low as 1.4%.

General Discussion

The conclusions of this paper are therefore of a mixed nature. The effects of prior experience on SLE are clear to see in distinctly different SLE scores dependent on experience level. However, direct prior experience does not appear to predict a large portion of this difference. Accordingly, we have to assume that while as expected, prior experience of legal problems has an effect on legal empowerment levels, the impact of other sources of information (vicarious experience, verbal persuasion and affective state) is greater than might be expected and indeed likely outweighs the effects of direct experience.

Further, the relationship between prior experience and current levels of legal empowerment was in fact found to be the opposite of the relationship expected. While it was expected that prior experience of legal problems would create a more positive level of legal empowerment, due to both the effects of experience and development of an understanding of the processes involved, in fact it was found that prior experience in all domains actually produced *lowered* legal empowerment levels. This lowering of legal empowerment was found in general SLE, regardless of the domain in which the prior experience took place, and also in relation to the specific SLE domain in which the problem took place. There is some indication that success in solving the prior legal problem mediates this relationship (with mean scores being non-significantly higher for those whose problems were solved compared to those whose problems were not solved). However, when entered into the regression, whether the problem was solved or not was not a significant predictor of legal empowerment.

This finding is particularly important for those who are concerned with improving legal empowerment levels amongst the general population. This negative effect indicates that individuals who have experience of a prior legal problem judge themselves as *less* likely to solve a new legal problem should it arise. This probably makes them less likely to attempt to solve their problem.

In terms of process design, research has frequently highlighted the procedural aspects in justice perceptions (Tyler, 1988, 1989, 1997; Van den Bos, Lind, & Wilke, 2001), and it appears that there are three main areas where processes in general can be improved to mitigate the reduction in SLE highlighted in this paper. These are of particular concern, as the interpretation of the results highlights the likelihood of processes appearing to be outside the control of the individuals concerned, and to be based on arbitrary factors.

Other research has highlighted the effect of prior experience on the general trust in courts and legal systems (Maru, 1998; Mishler & Rose, 1997; Tyler & Huo, 2002; Tyler, 2001), and this of course will be related to SLE ratings. Of the dimensions of justice (Gramatikov et al., 2010) that might be focused upon to improve these outcomes, procedural, informational and interpersonal justice would appear to be the best options. These dimensions relate particularly to increasing understanding, involvement and comprehension in the process. These dimensions are thus the most important in countering the apparent disillusionment of individuals in legal processes demonstrated here. Improving these aspects would improve the experience of the users in the justice process, especially in relation to their feelings of involvement and control over the process, which tends to produce higher satisfaction levels (Gosling, 2006; Lind et al., 1989; Orth, 2002).

Conclusion

While prior experience appears to effect levels of SLE, the manner in which this takes place is not clear. While prior experience results in lower overall and domain-specific SLE ratings, it is not a good predictor of SLE ratings, despite accounting for a significant portion of variation in SLE ratings.

Further, in this sample, prior experience with legal problems produces *lowered* legal empowerment ratings. This indicates that the majority of experiences produce negative effects in terms of individual's beliefs in their ability to solve legal problems. Respondents in our sample appear to fall into the same category as those in Gallagher & Wang's study (2011) in that they become despondent as a result of their experiences. This finding appears to hold regardless of the number of prior experience and the outcome (successful or unsuccessful) of the prior experiences. Accordingly, there is clearly much work to be done in improving the experiences of legal processes to individuals, and it is likely that improvements in the involvement of individuals in legal cases (through improvements in process, information and interpersonal justice) would have the largest impact.

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