

McGill Law Journal accessible summary:

Why must groups be procedurally fair to their members?

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Published in 2026, Volume 71, Issue 1, pages 203–245

Topic and importance

This article is about the law that applies to voluntary associations: groups which people are free to join or leave, such as churches, political parties, unions, and clubs. Sometimes, these groups make decisions that affect their members' rights. For example, they might expel a member, which could affect the member's property or contract rights. In cases like this, the law requires the group to treat the member with "natural justice." Natural justice is about having fair procedures, like having a chance to present your side of the dispute, and having an unbiased decision-maker. The article is about why the law requires natural justice in these situations.

Why do we require this kind of fairness? This question matters because groups can have a big impact on our lives by the decisions they make. It makes a difference if those decisions are made fairly. On the other hand, this area of law can also interfere with groups' decision-making. Finding the right explanation for this legal requirement should help us understand how it works and whether it is justified.

Main arguments

While there are many cases applying natural justice to voluntary associations, there is not much agreement about why. The article considers 2 theories that already fit with other areas of the law to see if they can explain this as well.

The first theory is that voluntary associations have to be fair for the same reason the state has to be fair. After all, we already accept that when government bodies are making decisions that affect individuals, they have to act fairly. The problem with this theory is that states aren't only required to be fair. They also have to be neutral, for example by not assuming that one religion is more true than another. But neutrality doesn't make sense for voluntary associations.

The second theory is that voluntary associations have to be fair because they are created using private law. Private law is the area of law that deals with interactions between individuals, like lending property or making a contract. When voluntary associations make legally binding decisions, like expelling a member, that is done using property and contract law. So the requirement to be fair could be understood as a limitation on how property and contract law can be used. The problem with this theory is that it doesn't explain where this limitation comes from. There are lots of property and contract rights outside of voluntary associations, and in those cases, there's no requirement of fairness.

Finally, the article offers its own theory. The main idea is that procedural fairness is built into the way groups organize their members using general rules. These rules don't require members to agree on a single purpose. Instead, they allow members to pursue their own purposes within a shared framework. When a group organizes its members in this way, procedural

fairness is built in. Another name for this kind of fairness is “the rule of law.”

Conclusion and additional considerations

If the article’s theory is right, then the requirement of fairness may be different from group to group. Those groups which rely on abstract rules will have higher requirements of fairness.

More generally, the article suggests that states are not the only source of the rule of law. Groups can provide it too. Finally, if private organizations continue to shape our lives and interactions in significant ways, the common law can require them to treat us fairly.