

# Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness

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**Abstract:** The procedural justice literature has grown enormously since the early work of Thibaut and Walker in the 1970s. Since then, the finding that citizens care enormously about the process by which outcomes are reached – even unfavorable outcomes – has been replicated using a wide range of methodologies (including panel surveys, psychometric work, and experimentation), cultures (throughout North America, Europe, and Asia), and settings (including tort litigation, policing, taxpayer compliance, support for public policies, and organizational citizenship). We have learned a great deal about the antecedents and consequences of these judgments. In particular, the work of Tom Tyler and Allan Lind and their colleagues suggests that people care about voice, dignity, and respect for relational and symbolic rather than (or in addition to) instrumental reasons. This has benevolent implications for governance and social cooperation, but also some troubling implications, leaving people susceptible to manipulation and exploitation.

## INTRODUCTION

Like many states, in the 1980s New Jersey sought a way to manage an increasingly congested and backlogged civil trial caseload. Their attempted solution was to introduce a program of mandatory but non-binding court-annexed arbitration, with simple and informal hearings, for auto negligence cases worth up to \$15,000. The program was premised on a seemingly straightforward argument: Because trials are costly and slow, diverting cases from the trial calendar will increase court efficiency. Thus they were quite surprised when a quasi-experimental evaluation revealed a significant increase in time to termination among eligible cases, and a significant increase in the number of suits actually resolved by court hearings (MacCoun, Lind, Hensler, Bryant, & Ebener, 1988). How could this happen?

Like many observers, New Jersey officials assumed that litigants were motivated primarily by economic concerns – dollar outcomes and transaction costs. Of course, litigants do care a great deal about these factors. But three decades of sociolegal research have demonstrated that citizens also care deeply about the process by which conflicts get resolved and decisions get made, even when outcomes are unfavorable or the process they desire is slow or costly (Thibaut & Walker, 1978; Lind & Tyler, 1988). Although many aspects of procedure shape this *fair process effect* – lack of bias, thoroughness, clarity – two particularly important dimensions are *voice* (the ability to tell one’s story) and dignified, respectful treatment (Lind & Tyler, 1988).

Interpreted in this light, the New Jersey experience is easier to understand. Surveys showed that arbitration provided litigants with the same desirable procedural dimensions they wanted from trials: the opportunity to present their case, receive a dignified and respectful hearing, and get a verdict on the merits (MacCoun et al., 1988; Lind, MacCoun, et al., 1990). But of course arbitration provides those procedural features more quickly and cheaply than trial. Because few cases went to trial anyway, the program had no significant effect on trial rates. But there was a significant reduction in private, bilateral settlements (from 92% to 45%); arbitration diverted many more cases from settlement than from trial. In surveys, the most popular motivation cited by litigants was to “tell my side of the story.” Defendants and plaintiffs alike rated this as more important than winning their case or minimizing transaction costs (also see Lind et al., 1990; Lind, 1990). Was the program a failure? From an efficiency perspective, narrowly construed, yes. But by opting for arbitration hearings, citizens were clearly “voting with their feet” in favor of procedural attributes they valued, attributes they could not get in bilateral settlement (see Lind et al., 1990).

The fair process effect was first documented empirically in an innovative program of research psychologist John Thibaut and legal scholar Laurens Walker in the late 1970s (e.g., 1975, 1978) on what they labeled “procedural justice.” (In some ways, “procedural fairness” is a better label, but the distinction matters more to academic theorists than to ordinary citizens, and I will use the terms interchangeably; see van den Bos & Lind, 2002, p. 8). The second decade of procedural justice research centered on the remarkably prolific solo and joint efforts of Tom Tyler and Allan Lind, though many others made major contributions. Though Lind and Tyler remain active, work on the topic exploded in the 1990s as researchers found applications in a remarkably wide range of literatures (in law, medicine, politics, business, education, social work, sports, and so on). As of early 2005, the PsychInfo database lists almost 700 articles with the phrase “procedural justice” in the abstract; over 40 a year since 1995 and over 70 a year in 2000-2003, and this excludes many articles in sociolegal journals not abstracted there. Astonishingly, over 600 of these articles were published *after* Lind and Tyler’s (1988) influential review of the literature.

This essay cannot hope to do justice to such a large literature, pun intended. But I will survey the major empirical findings across in a range of legal and political domains, showing just how central procedural justice has become in the study of law and society. I will critically examine our current understanding of the nature and etiology of fair process concerns – especially the voice motive – including the roles played by instrumental control, self identify and group relational concerns, and cognitive and emotional factors. I will give special attention to the moderating effects of diversity and culture -- and to the sometimes surprising lack of such effects. This raises both normative and empirical concerns about the degree to which procedural justice phenomena reflect “false consciousness” and what that might imply for policy makers on the one hand, and political activists on the other.

### *A Methodological Note*

Some methodological practices in the procedural justice literature are common in psychology but less familiar in other disciplines, where they are a source of discomfort if not skepticism. But the key point is the cumulative rigor of the literature as a whole. One can be troubled by the use of college students, simulated conflicts, structural equation “causal” modeling, or the inherently “subjective” nature of fairness judgments. But each of these issues has received considerable attention by procedural justice scholars, and the sheer heterogeneity of tasks, domains, populations, designs, and analytic methods provides remarkable convergence and triangulation. Few if any sociolegal topics – perhaps only deterrence theory – have received as much attention using as many different research methods.

The original Thibaut and Walker program was largely experimental, involving college students’ reactions to simulated conflict resolution scenarios. These experiments necessarily sacrifice ecological realism in order to increase the internal (causal) validity of the hypothesis testing (Mook, 1983), which is essential in a domain where endogenous, reciprocal, or spurious influences are plausible. Most of the major variables of theoretical interest have been experimentally manipulated: The disputant’s role (e.g., plaintiff vs. defendant); the evidentiary support for each party; the third party’s decision; the disputants’ process and decision control; the decision maker’s bias; the relationship among disputants and their relationship to the third party; etc.

Artificial experiments are vulnerable to threats to external validity, but those threats are not proof of external *invalidity*, which is ultimately an empirical question. And indeed, most concerns about the external validity of the fair process effect (and its antecedents and consequences) have long since been settled. As documented below, the basic phenomena of procedural justice have been documented across dozens of social, legal, and organizational contexts involving every major demographic category in the U.S., and almost every major industrial country in North America, Asia, and Europe. (A meta-analysis of

190 procedural justice studies initially appeared to show significant discrepancies between laboratory and field studies, but this turned out to be a statistical error; Cohen-Charash & Spector, 2001, 2002).

Inevitably, these field studies have purchased external validity at the cost of greater uncertainty about causation. Most of these studies use multivariate statistical analysis to assess whether the data are consistent with causal hypotheses. Some variant of hierarchical regression, path analysis, and/or structural equation modeling is often in an attempt to rule out spurious effects and control for endogenous or reciprocal influences (Bollen, 2002). Psychologists often use such techniques to test for moderator effects (where Variable C modifies the existence, magnitude, or valence of a correlation between A and B) or mediator effects (where A exerts its influence on C through an intermediate causal link:  $A \rightarrow B \rightarrow C$ ; see Baron & Kenny, 1986). These methods are very convincing when used with experimental data, but more fallible in correlational field research. Many studies (e.g., Lind, Greenberg, Scott, & Welchans, 2000; Tyler, 1990) strengthen correlational designs using multiple waves of data collection, which permit cross-lagged inference. In future work, procedural justice research might benefit from greater use of quasi-experimental design strategies as well as modern econometric techniques for handling identification and selection problems.

Even cross-lagged analyses can lead to incorrect inferences due to measurement unreliability (Rogosa, 1980). But few areas of sociolegal research can boast a comparable level of attention to measurement reliability and construct validity. Almost all procedural justice studies measure key constructs using multiple indicators; interitem reliabilities are usually reported (and usually reasonably high), and exploratory or confirmatory factor analyses are used to establish that theoretically distinct concepts are, in fact, empirically distinguishable (see Blader & Tyler, 2003; Cohen-Charash & Spector, 2002, 2003; Colquitt, 2001; Colquitt, Conlon, Wesson, & Porter, 2001; Skitka, Winquist, & Hutchinson, 2003). Future work would be enriched by the complementary use of other measurement approaches, including qualitative methods, observational coding, content analysis, unobtrusive measures, and so on.

## **THE INFLUENCE OF PROCEDURAL FAIRNESS ON SOCIETY AND LAW**

### ***Procedural Preferences for Dispute Resolution***

Most Americans now recognize at least one of the several dozen lawyer jokes long in circulation (see Galanter, 1998). But the fact that we rarely tell jokes about physicians, whom we hold in high regard, or child molesters, whom we loathe, suggests that we are ambivalent about lawyers -- we decry their ruthless mercenary adversarialism unless they are representing us in a conflict (MacCoun, 2001). The remarkably fruitful (and then still rare) interdisciplinary collaboration between Thibaut and Walker (1975, 1978) helped explain our ambivalent relationship with adversarialism. In doing so, they were the

first to systematically document the “fair process” or “voice” effect discussed above. But they also launched an empirical research program on the design properties of legal procedure that has been enormously influential in the alternative dispute resolution (ADR) community.

Coming from an instrumental, social-exchange theory tradition, Thibaut and Walker analyzed procedures with respect to the distribution of control across parties. *Decision control* refers to the disputants’ ability to directly shape the final outcome. *Process control* refers to the disputants’ ability to influence the presentation of evidence and arguments. This is reminiscent of Thibaut’s work with Kelley on interdependence theory, which formally decomposed game theoretic outcome matrices with respect to abstract dimensions of bilateral reflexive control, mutual fate control, and mutual behavior control (Kelley & Thibaut, 1978). In bargaining, parties retain both forms of control. In mediation, they cede some process control to a third party while retaining decision control. In an idealized adversarial system, they cede decision control but retain process control. In an idealized autocratic system, the parties cede both process and decision control to a 3<sup>rd</sup>-party inquisitor.

Thibaut and Walker (1975) asked American students to imagine various hypothetical conflicts and various mechanisms for resolving them – including two-party mediation, 3rd party investigation and resolution by a neutral inquisitor, and a 3rd party decision based on investigation and arguments presented by advocates for each side. Importantly, the descriptions were stripped of labels like “lawyer” or “judge” and other overt references to actual legal systems. A strong majority identified the adversarial system as the fairest mechanism. Subsequent studies (see Lind & Tyler, 1986) have replicated this finding in European nations with inquisitorial systems, suggesting that it is not an artifact of American socialization or mere familiarity (but see Anderson & Otto, 2003). (As discussed further below, citizens in Asian countries tend to divide their support between the adversarial model and two-party mediation.)

It is now clear that this favorable view of adversary procedures is by no means unconditional (Shestowsky, 2004; Tyler et al., 1997). There is no particular reason to believe that a taste for adversarial procedures should be universal or evolutionarily “hard wired.” Thibaut and Walker argued that third parties were most likely to be sought out when a resolution was urgent, in zero-sum situations, when convergent “win-win” solutions were elusive, or when the parties’ relationship seemed unlikely to support cooperative problem solving. We now know that a variety of conditions increase support for non-adversarial procedures. On the one hand, autocratic, inquisitorial-style procedures (with less process control than the adversarial model) are rated more favorably when they provide opportunities for voice (Sheppard, 1985; Folger, Cropanzano, Timmerman, Howes, et al., 1996), or when the conflict involves a highly volatile opponent (Morris, Leung, & Iyengar, 2004). On other hand, disputants often prefer to retain decision control (through bilateral bargaining or non-binding third-party mediation) when they have strong bargaining power, when integrative solutions are apparent, when a more adversary process

threatens the disputants' ongoing relationship, or in more collectivist, communitarian cultures (see Heuer & Penrod, 1986; Leung & Lind, 1986; Leung, 1987; Lind, Huo, & Tyler, 1994; Shestowksy, 2004). But we lack a comprehensive theory of decision control to match our level of understanding of process control (discussed below). Perhaps because so many political and organizational domains constrain the possibilities for decision control, process control has received much more attention in the literature.

Thibaut and Walker's research program also included two other dimensions that receive less attention here. One is a focus on the objective behavioral and cognitive effects of legal procedure on decision makers and on witnesses. For example, discovery and trial presentation produces a more biased distribution of facts (relative to the fact pool made available in the experiment) in the adversarial format (where each party had a representative) than in the inquisitorial format (where a third party assembled evidence) (Thibaut & Walker, 1975). Relative to inquisitorial questioning, adversarial questioning biases witness responses in favor of the party that called them to testify (Sheppard & Vidmar, 1980). Empirical study of the consequences of procedural variations (in witness interviewing, in lineup format, in jury trials, and so on) is a flourishing enterprise in the "psychology and law" literature (and the sociolegal literature more generally), but the term "procedural justice" is now largely reserved for studies of the evaluations and responses of the "recipients" of procedure, rather than its enactors. Thibaut and Walker (1978) also offered a normative theory of procedure, arguing that inquisitorial procedures are best suited for "truth conflicts" and adversarial procedures are best suited for "conflicts of interest." This tidy dichotomy seems difficult to sustain in practice; for a critical discussion, see MacCoun (in press).

Americans hold more favorable opinions of the jury system than of the courts more generally (Hans, 1993; MacCoun & Tyler, 1988). MacCoun and Tyler (1988) found that citizens strongly preferred trial by jury to trial by judge, and the traditional 12-person unanimous jury to smaller or non-unanimous juries. Relative to trial by judge and to smaller or non-unanimous juries, the traditional jury structure was seen as fairer, more accurate, more thorough, and more representative of community viewpoints. This wasn't blind enthusiasm; citizens preferred more efficient approaches (trial by judge or small non-unanimous juries) for trivial cases like shoplifting.

### ***Satisfaction with Legal Experiences***

Citizens do not always have much choice of the procedures they encounter. Speeding drivers get pulled over by the police, civil litigants may be obligated to go to ADR rather than (or before) trial, and criminal suspects must face trial if they want a chance to avoid sanctions. In a number of studies, Tyler and his colleagues (1984, 1988; Casper, Tyler, & Fisher, 1988) have examined how criminal defendants assess their day in court, finding that even citizens sentenced to steep prison terms are more satisfied and

more positive in their views of authorities when they perceive the decision makers as honest and unbiased as the legal process as fair.

Tyler and Folger (1980) were the first procedural justice researchers to move beyond the court-based simulations of Thibaut and Walker and examine the role of procedural fairness judgments in citizen evaluations of police authority. In doing so, they also launched a focus on less formal, more interpersonal aspects of authority behavior (also see Bies & Tyler, 1993; Blader & Tyler, 2003; Collie, Bradley, & Sparks, 2002; Vermunt, Blaauw, & Lind, 1998).

Bandura (1986, p. 174) notes that "almost every urban riot was sparked by a provocative police encounter with a ghetto resident that provoked onlookers to retaliatory violence." Law enforcement experts now view the perceived fairness of police conduct as a crucial aspect of effective policing (see Skogan & Frydl, 2003). Tyler and Folger (1980) assessed the reactions of ordinary citizens to encounters with the police during 911 calls for assistance or routine traffic stops. In both contexts, the perceived fairness of the officers' treatment of the citizen had a reliable effect on citizen satisfaction, even after controlling for the actual outcome of the encounter, a finding consistently replicated in later surveys (e.g., Tyler & Huo, 2002; Tyler, 1990). Interestingly, police performance and satisfaction are themselves influenced by officer evaluations of procedural fairness in departmental assignment decisions (Farmer, Beehr, & Love, 2003).

In the civil domain, proponents of ADR have argued that traditional trials are too complex and too alienating, but in fact, disputants who actually participate in trials tend to view the trial process favorably, and again, to a surprising extent this is true of "losers" as well as those who win their case (Lind et al., 1990; MacCoun et al., 1988; MacCoun, Lind, & Tyler, 1992). These procedural fairness results are not limited to naïve or inexperienced citizens. MacCoun et al. (1988) found that while attorneys tended to perceive greater process fairness than their clients, their judgments differed in degree rather than in kind, and attorneys and their clients emphasized similar various procedural attributes in their fairness judgments – both giving greater weight to ratings of the quality of treatment than to the actual monetary outcome of the case. Lind (1990) found that litigants in very high stakes arbitration cases in federal court evaluated procedural fairness quite similarly to "one-shot" litigants in low-stakes ADR studies. And Stalans and Lind (1997) that both taxpayers and their professional representatives were influenced by similar aspects (e.g., dignity) of the procedural fairness tax audit process, although the representatives were more sensitive to outcome characteristics.

An inevitable concern with these interview studies is that "talk is cheap" – little is at stake in the interview, social desirability pressures may encourage "good sportsmanship," and fair process ratings may share covary with more global satisfaction ratings because of shared semantic content. This concern is mitigated in part by the experimental simulations, which show that people will readily patently bad

procedures and outcomes. But in the field, one would like some behavioral manifestations of the process effect. Fortunately, there are an increasing number of examples in the literature. One early behavioral effect was that the perceived fairness of arbitration hearings significantly predicts litigant decisions to accept an arbitration decision, rather than rejecting it in favor of trial de novo (MacCoun et al., 1988). Lind, Kulik, Ambrose, and Park (1993) replicated this effect and showed that it is independent of the arbitration outcome. Using pooled data from civil litigants participating in mandatory nonbinding arbitration in U.S. District Courts in 9 states, they found that the decision to accept the arbitration award was more strongly associated with procedural justice judgments (standardized path coefficient = .47) than with the objective size of the arbitration award (.20). Long (2003) shows procedural effects on compliance with mediation outcomes.

Though a detailed discussion is beyond the scope of this essay, procedural justice theory has played an important role in the restorative justice movement (Braithwaite, 2002; Strang, 2004). Restorative justice draws on the notions of voice and respect from procedural justice, together with Braithwaite's notion of "reintegrative shaming," to design procedures that bring victims and offenders together to seek reconciliation. Proponents suggest that these hearings can help victims emotionally, while providing both rehabilitation and deterrence for the offender.

### ***Compliance with the Law***

Empirical research on deterrence theory shows that the correlation between legal sanctioning and legal compliance is surprisingly weak, and partially spurious (see MacCoun, 1993). Given the impossibility (and, in a democratic society, the undesirability) of absolute surveillance and enforcement, social scientists have long argued that civil order is maintained in large part by citizens' willingness to comply with laws, via personal moral beliefs, conformity to social norms, or informal social sanctions (Weber, 1986; French & Raven, 1959). Tyler (1990) argued that willingness to comply with laws is determined in large part by the perceived fairness of their enforcement. He tested this reasoning using cross-lagged correlational analysis of a panel study of citizens in the Chicago area to test the association between the perceived fairness of the police and the courts and subsequent compliance with the law. Tyler showed that the association between Wave 1 evaluations and Wave 2 compliance was significantly stronger than the lagged association of initial compliance on later evaluations.

Other studies support this procedural justice effect. A re-analysis of data from the Milwaukee Domestic Violence Experiment found that the suspect's evaluation of the unfairness of police conduct was a stronger predictor of subsequent domestic violence than was the initial decision to arrest or not arrest the offender (Paternoster et al. 1997). Murphy (2004) and Wenzel (2002) each documented a link between procedural fairness judgments and taxpayer compliance. Makkai and Braithwaite (1996) found



mixed support for a procedural fairness effect on regulatory compliance by business executives. A newer study by Tyler and Huo (2002) presents a somewhat more nuanced picture. California citizens' acceptance of the outcomes of encounters with legal authorities was better predicted by perceptions of trustworthiness and fair treatment (standardized path coefficients = .46 and .32) than by outcome fairness (.09). But for a direct measure of compliance, the effects were much weaker (.12 for trust, .06 for fair treatment, and .07 for outcome fairness). The authors argue that the effects were weaker because, unlike acceptance, "compliance can be induced by the fear of force or punishment" (p. 82). All these studies share a reliance on correlational methods that cannot conclusively establish causality. Experimental simulations confirm the causal influence of procedure on compliance intentions in studies of taxpaying compliance (Casey & Scholz, 1991) and mental health professionals' reactions to malpractice verdicts (Poynthress, 1994). But an obvious next step would be to deploy quasi-experimental design strategies and modern econometric identification techniques in field research.

### *Claiming and Litigiousness*

In a workplace survey, Bies and Tyler (1993) found that employee perceptions of the fairness of the organization's procedures and rules were the most important correlate of self-reported willingness to consider suing the organization. In a survey of 996 workers who had been fired or laid off, Lind, Greenberg, Scott, and Welchans (2000) were able to link such perceptions directly to actual decisions about whether to file a wrongful termination lawsuit. Perceptions of how they had been treated during the termination itself were the strongest correlates of employee claiming – stronger than the expected dollar value of the suit, and stronger than their perceptions of how they had been treated during their full career at the firm. Lind and colleagues used 4-month follow up interviews to show that the treatment ratings were more likely a cause than a consequence of the decision to file a lawsuit. The authors estimate that employers could have saved \$13,200 per termination by ensuring that employees perceived their treatment at termination as honest and respectful. Roberts and Markel (2001) report similar results in a study of the decision to file workers' compensation claims.

A number of studies have identified physicians' "bedside manner" to patient decisions to file malpractice lawsuits, including two surveys of medical malpractice claimants (Hickson, Clayton, Githens, & Sloan, 1992; Vincent, Young, & Phillips, 1994) and a content analysis of plaintiff depositions (Beckman, Markakis, Suchman, & Frankel, 1994). Hickson et al (1992) note that mothers of injured or deceased infants complained that "physicians would not listen (13% of sample) [and] would not talk openly (32%)." Vincent, Young, and Phillips (1994) found that "The decision to take legal action was determined not only by the original injury, but also by insensitive handling and poor communication after the original incident. Where explanations were given, less than 15% were considered satisfactory.

...Patients taking legal action wanted greater honesty, an appreciation of the severity of the trauma they had suffered, and assurances that lessons had been learnt from their experiences.” Seventy one percent of the plaintiff depositions examined by Beckman, Markakis, Suchman, and Frankel (1994) cited problems in the physician-patient relationship, clustering around four themes: “deserting the patient (32%), devaluing patient and/or family views (29%), delivering information poorly (26%), and failing to understand the patient and/or family perspective (13%).”

Unfortunately, by excluding patients who could but did not claim, these studies cannot conclusively establish a correlation between procedural or relational judgments and medical malpractice claiming. But the inference is strengthened by a clever content analysis of audiotaped office visits involving a large sample of physicians with and without lifetime malpractice claims (Levinson, Roter, Mullooly, Dull, & Frankel, 1997). Among primary care physicians, those without claims experience spent more time with patients, used more humor, explained more, and “tended to use more facilitation (soliciting patients' opinions, checking understanding, and encouraging patients to talk)” – i.e., encouraged patient voice. Interestingly, no such differences were found among surgeons who had or had not been sued.

In light of such evidence, many commentators have argued that physicians can and should improve their interpersonal skills, both to reduce their liability exposure and because the ethical principle of beneficence requires it (see Beckman, Markakis, Suchman, & Frankel, 1994; Forster, Schwartz, & DeRenzo (2002). As Hickson et al. (1992) note, “Obtaining money may not be the only goal for some families who file suit.” Similarly, Vincent, Young, and Phillips (1994) argue that “a no-fault compensation system, however well intended, would not address all patients' concerns. If litigation is viewed solely as a legal and financial problem, many fundamental issues will not be addressed or resolved.”

### ***Legitimacy and the Acceptance of Government Policies***

Tyler and his colleagues have documented the role that procedural fairness plays in citizens' willingness to cooperate with government decisions and policies, including Supreme Court rulings (Tyler and Mitchell, 1994), whites' support for affirmative action (Smith & Tyler, 1996), California's “three strikes” law (Tyler & Boeckmann, 1997), Californians' response to a 1991 water shortage (Tyler & DeGoey, 1995), and citizen attributions about whether police stops constitute racial profiling (Tyler, 2003). Others have examined the role of fair process in citizen contributions to public goods (De Cremer & van Knippenberg, 2003), views of the Kenneth Starr prosecution and the Congressional impeachment of President Clinton (Kershaw & Alexander, 2003), and reactions to corporate drug testing policies (Kulik & Clark, 1993; Wagner & Moriarty, 2002).

Tyler (e.g., Tyler & Lind 1992; Tyler, 2003) has long argued that procedural fairness plays a key role in shaping the legitimacy that citizens grant to government authority. Following Weber (1968), Tyler argues that this legitimacy or support for the system is critical to the ability to govern effectively without tyranny and coercion. He has repeatedly documented a pattern of correlations consistent with a causal chain in which procedural fairness leads to perceived legitimacy, which leads to the acceptance of policies. Gibson (1989) disputed Tyler's interpretation of these correlations, arguing that legitimacy is the cause rather than the consequence of perceived fairness. Using the 1987 General Social Survey, Gibson found significant correlations between procedural fairness and legitimacy (.42) and between legitimacy and acceptance (.15), but the association of procedural fairness and acceptance was not significant (.05). (Confusingly, some studies have labeled acceptance "compliance," but unlike the studies discussed above, what is measured is an attitude rather than a behavior.) Tyler and Raskinski (1991) replied that this is exactly what one would expect from a causal model in which procedural fairness affects acceptance indirectly via legitimacy; if so one would predict a direct effect of  $.42 \times .15 = .06$ , almost exactly what Gibson found. Mondak (1993) claimed to support Gibson's causal interpretation by finding no effect on legitimacy of an experimental manipulation of the Supreme Court's procedural fairness. But because Mondak could not actually manipulate the Court's behavior, what he actually varied was whether respondents were *told* that the Court was scrupulous in its procedures. This seems much less persuasive than typical experiments using scenarios rather than views of actual institutions and outcomes. At any rate, Tyler (2003) has now amassed enough evidence that his interpretation seems sound. There is ample evidence that procedural fairness and legitimacy are correlated, and it is almost surely the case that the correlation reflects causation in both directions.

### ***Organizational Citizenship***

In the 1990s, much of the growth in procedural justice studies occurred in the organizational behavior literature. Although only indirectly relevant to the sociolegal focus of this essay, these studies conceptually replicate and extend some of the basic findings discussed above. For example, Brockner and his colleagues have published a number of large-scale field studies of the reactions of employee "survivors" to corporate layoffs (e.g., Brockner, DeWitt, Grover, & Reed, 1990; Brockner, Tyler, & Cooper-Schneider, 1992; also see Robbins, Summers, Miller, & Hendrix, 2000). These studies suggest that the quality of managers' conduct during the layoff – their efforts to explain the rationale for the layoff, and the dignity and respect they afforded to those terminated – influences the morale, commitment, and cooperation of the remaining staff. Bies, Martin, and Brockner (1993) found that this "good citizenship" effect even extended to laid-off employees during the period between notification and termination.

## **THEORY**

### ***Background***

Economics, behaviorist psychology, and the public choice and social exchange traditions share a common emphasis on the explanatory power of outcomes and incentives. The mass media and the legal literature tend to perpetuate the view that outcomes -- especially monetary outcomes -- drive legal behavior, legal judgments, and evaluations of the legal system (see Miller, 1999). An early refinement of this view was relative deprivation theory – the notion that what matters to citizens are relative outcomes (mine vs. yours or theirs), rather than absolute outcomes (for a review, see Tyler et al., 1997). A related viewpoint was equity theory (e.g., Walster & Walster 1975), which links fairness to the relative ratio of inputs to outcomes across actors.

Each approach had important successes. Relative deprivation theory seems to explain many important historical rebellions (see Crosby, 1976), as well as some surprising effects of social class on health and longevity (e.g., Wilkinson, 1997). Equity theory provided a good account of many work-based allocation situations (Walster & Walster, 1975); even citizens in Eastern and Central Europe (Bulgaria, Hungary, Poland, Russia) apply this equity standard in reactions to job-related conflicts (Cohn, White, & Sanders 2000). But both models fare poorly in non-market contexts and relationships (Fiske 1992). Across various settings, studies have found support for allocation by equality, by need, or by more complex multidimensional decision rules (see Deutsch, 1975; Mellers and Baron 1993). And both theories tend to overpredict resentment and rebellion, and underpredict citizen acceptance. Of course, citizen acquiescence can stem from simple cost-benefit calculations. Moreover, both theories fail to predict which of many possible comparison standards the citizen will use; citizens do not invariably choose the source (my ingroup, an outgroup, people in the past, myself in the past) that provides the most invidious comparisons. But a major drawback was that the relative deprivation and equity traditions largely ignored procedural considerations.

Thibaut and Walker's (1975) research program demonstrated that the processes by which outcomes are reached matter profoundly to citizens. Thibaut and Walker (1975) adopted an instrumental interpretation of their findings. They contended that procedures matter to citizens because fair procedures produce fair outcomes. From this perspective, process control matters not so much as an end in itself but as a means to an end – a way of improving one's prospects given the inevitability of relinquishing some decision control. The process effects first documented by Thibaut and Walker have proved to be remarkably robust. Their control-based account of voice effects has fared less well.

### ***The Relational Perspective***

If Thibaut and Walker's control perspective is "tough-minded," the dominant perspective since the late 1980s is the more "tender-minded" interpretation offered by Tom Tyler and Allan Lind in their group value model (Lind & Tyler, 1988) and their relational model of authority (Tyler & Lind, 1992). (The Tyler-Lind relational model extends the earlier model beyond decision procedures to public support for authorities and rules more generally.) They argue that the interdependence of social life creates a fundamental dilemma for people. A trusting, cooperative relationship with our group can provide resources and rewards we would be unable to obtain on our own. But the need to cede control to others puts us at risk – we could be harmed, neglected, discriminated against, or ostracized. Decision making and allocation procedures not only deliver immediate outcomes; they also convey important information about our relationship with the group and its authorities. Thus, Tyler and Lind argue that we are especially attuned to three process dimensions: the neutrality of the procedure, the trustworthiness of the third party, and signals that convey our social standing. Although the first two dimensions were included in an earlier list of procedural desiderata (Leventhal, 1980), the third factor – standing – is the most distinctive contribution of their models. Tyler and Lind (1992; Lind and Tyler, 1988) argued that standing is communicated by "dignitary process" features – the perception that one was treated with politeness, dignity, and respect.

Those of a tough-minded bent usually find it almost impossible to believe that politeness could possibly approach the impact of "the bottom line" – be it a tort award, a criminal sentence, or a job layoff. Nevertheless, citizen ratings of the dignity and respectfulness of their treatment consistently emerge as primary correlates of procedural justice. For example, in a correlational study of tort litigants in three counties, Lind et al. (1990) found that perceived dignity accounted for more variance in litigant outcome satisfaction than did case duration or personal trial costs. Many authorities clearly recognize the importance of dignified treatment (or at least give lip service to it) and are reproached when they do not. In 2004, the Command Joint Task Force listed "Treat civilians with dignity and respect" as one of their key rules for security contractors in Iraq (New York Times, 2004). The Second District Court of Appeal recently ruled that Los Angeles citizens have a right to "courteous treatment," after Los Angeles City Council members – flamboyantly dressed for their Hawaiian Shirt Day -- ruled against the owner of a strip club after visibly ignoring a presentation by his lawyer (Associated Press, 2005).

There are now many lines of evidence testing the Tyler-Lind model (see Tyler, 1994; Tyler & Lind, 1990, 1992; Tyler, Degoe, & Smith, 1996). For example, those treated poorly by authorities experience some reduction in self esteem (De Cremer, 2003). And stronger procedural justice effects are found when one's status is made salient (van Prooijen, van den Bos, & Wilke, 2002), when people feel included rather than excluded from the relevant group (van Prooijen, van den Bos, & Wilke, 2004), when

the relationships at stake are important to the person (Kwong & Leung, 2002), when group identification is strong (Huo et al., 1996; Wenzel, 2004), when the person scores high on a “need to belong” scale (De Cramer & Alberts, 2004), when the authority is an ingroup member rather than an outgroup member (Smith, Tyler, Huo, Ortiz, & Lind, 1998; but see Ståhl, Van Prooijen, & Vermunt, 2004). An especially interesting finding is that process effects are weaker for citizens who identify strongly with a subordinate group but weakly with a superordinate group; e.g., minority “separatists” as opposed to “assimilationists” (Huo et al., 1996) – an effect that is discussed in greater detail later. Perceived disrespect has also been linked to many other emotional and behavioral reactions, including violence (see Anderson, 1999; Beersma, Harinck, & Gerts, 2003; Miller, 2001).

### ***Non-Relational Influences on Procedural Justice***

Despite the dominance of the relational perspective, many lines of research suggest that more individualized cognitive and moral factors do influence procedural fairness evaluations. People judge procedures and outcomes relative to their beliefs about what will happen, what *could* happen, and what *should* happen. A number of studies have found that justice judgments are influenced by others’ ex ante predictions about an allocation decision (Heuer & Penrod, 1994) as well as others’ ex post evaluations of an allocation (Folger, Rosenfield, Grove, & Corkran, 1979). Drawing on concepts from social exchange theory and the counterfactual reasoning literature, Folger proposed a “referent cognition theory” of relative deprivation (e.g., Folger, 1984; Folger & Martin, 1986; Folger, Rosenfield, & Robinson, 1983), predicting that discontent is a joint function of low justification for outcomes combined with a readily imaginable better outcome. Van den Bos and van Prooijen (2001) argued that referent cognition theory can contribute to our understanding of the voice effect. In two experiments they found that the lack of voice affected perceived injustice most strongly when a salient counterfactual outcome (what could have happened) was close to rather than distant from the actual outcome. On the other hand, Tyler and Huo (2002) found little independent influence of expectations in a California survey, but ex-post ratings of ex-ante expectations tend to be tainted by knowledge of what actually happened – what psychologists call a “hindsight bias” (e.g., Hawkins & Hastie, 1990).

People also bring to a situation various pre-existing personal moral intuitions, and some of these intuitions are about fair process (Cropanzano, Goldman, & Folger, 2003). In accord with the Kohlberg tradition on moral reasoning, Wendorf, Alexander, and Firestone (2002) argue that intuitions about procedural justice emerge in a developmental sequence that is preceded by pure self interest and then concerns about distributive justice. But Gold, Darley, Hilton, and Zanna (1984) found that American first graders were already sensitive to procedural justice, reacting negatively to a mother who punished her child for a broken vase if she failed to first consult a witness to the event.

But of course people also have other moral intuitions that may conflict with, or override, fair-process concerns. For example, in a laboratory work simulation, Hegtvedt and Killian (1999) found that rising pay increased pay satisfaction but at the price of guilt over unfairness to the other worker. More generally, Heuer, Blumenthal, Douglas, and Weinblatt (1999) demonstrate that judgments of moral deservingness mediate the relationship between respectful treatment and perceived fairness; people do not expect authorities to deliver respect unconditionally. And Skitka (2002, 2003; Skitka & Houston, 2001; Skitka & Mullen, 2002) argues that people are less attentive to concerns about process when certain outcomes involve “moral mandates”; e.g., “the innocent should be acquitted.” Thus, due process considerations affected people’s evaluations of a verdict in an ambiguous case, but when people received independent evidence that a defendant was innocent, a conviction was perceived to be unfair irrespective the fairness of the prosecution and trial (Skitka & Houston, 2001). In another study (Skitka, 2002), deeply held moral beliefs were more influential than procedural fairness judgments in predicting acceptance of Supreme Court or legislative decisions that threatened those views. The boundary conditions on this “moral mandate” effect are still unclear; it is difficult to believe that these abstract values are more passionately held than litigant views about the “right verdict” in their own cases, and yet research reviewed above shows that both winners and losers at trial are quite responsive to process fairness considerations.

### ***Are Procedural and Distributive Justice Substitutes?***

Discussions of procedural justice tread a fine line between the question “does fair process matter?” and “which matters more—process or outcomes?” The answer to the first question is decidedly yes; the second question may not be answerable in a meaningful, global way. Meta-analyses suggest that procedural and distributive justice judgments are moderately correlated ( $\rho = .64$  in Hauenstein, McGonigle, & Flinder’s 2001 meta-analysis), and that each has independent effects on a variety of attitudinal and behavioral outcomes (Cohen-Charash & Spector, 2001, 2002; Colquitt, Conlon, Wesson, & Porter, 2001). For example, in separate studies of bank employees, engineers, and manufacturing employees, procedural justice has better predicted attitudes toward one’s supervisors and organization, while distributive justice has better predicted pay satisfaction and job satisfaction (Folger & Konovsky, 1989; McFarlin & Sweeney, 1992; Sweeney & McFarlin, 1993).

But direct “horse race” comparisons of predictor strength are problematic for a variety of reasons. The traditional “variance accounted for” (squared correlation or standardized regression coefficient) is influenced by measurement error, by range restriction, and by the situational salience of each variable. Further complicating matters, some studies assess “outcome favorability” while others assess “outcome fairness,” and the former produces stronger fair process effects than the latter (Skitka, Winkvist, &

Hutchinson, 2003). Moreover, the effects of monetary outcomes are not monotonic (Conlon, Lind, & Lissak, 1989).

Finally, and most importantly, procedural and distributive judgments have multiplicative, interactive effects on judgments of authorities and organizations. Across 45 different studies, Brockner and Wiesenfeld (1996) found that the typical pattern is that procedural justice has stronger effects when outcome ratings are low than when they are high, and outcome ratings have stronger effects when procedural fairness is low than when it is high. (The former is the fair process effect; the latter has been called the “fair outcome effect”; Van den Bos & Lind, 2002.)

In a fascinating program of organizational research that has received almost no notice in the law and social science literature, Allan Lind and Kees van den Bos (Lind, 2001; Lind, Kulik, Ambrose, & Park, 1993; van den Bos & Lind, 2002) have developed a theoretical model that integrates the relational model, research on expectancy and attributional effects, and the interactive impact of process and outcome considerations. At first glance, their “fairness heuristic theory” might appear to be a radical challenge to earlier thinking on procedural fairness, because it has been used to demonstrate, in experimental settings, that under certain conditions it is possible to make fair process effects shrink. Under one reading, the fairness heuristic model is a cognitive account whereas the relational model is a motivational account. The new hypotheses in the fairness heuristic account are indeed cognitive. But I would argue that at the same core motivational logic drives both fairness heuristic theory and the earlier relational model. The new model is simply more explicit in treating one’s relationship with authorities and the group as fundamental and procedural concerns as a means to that end.

Fairness heuristic theory starts with a proposition that has motivated many other psychological theories, the notion that people have a fundamental need to reduce uncertainty about the future. The “fundamental social dilemma” (van den Bos & Lind, 2002, p. 9) is that social life requires us to relinquish control over future outcomes to other people, leaving us vulnerable to their actions. The key innovation of the theory is the idea that information about process and information about outcomes each serve to reduce uncertainty about others’ motives, and hence the two can substitute for each other. Procedural fairness serves as a “heuristic substitute” when outcomes are ambiguous or unknown; similarly, outcome fairness can serve as a heuristic substitute when future procedures are not yet known. Firm knowledge of an authority’s trustworthiness reduces the informational value of either source. Tyler and Huo (2002, pp. 62-63) invoke the label “fiduciary relationship” to make a similar point: “If we believe that a person is motivated by goodwill, we need not seek to anticipate his or her particular actions. Whatever that person does will be a good-faith effort to help us.”

Lind, van den Bos, and their colleagues have been quite creative in creating new conditions for testing the model. They have shown that voice effects are weaker when an authority’s trustworthiness is



known to be positive or negative rather than unknown (van den Bos, Wilke, & Lind, 1998); when uncertainty is not salient (van den Bos, 2001); when other actors' outcomes are known (van den Bos, Lind, Vermunt, & Wilke, 1997); when outcome information is provided before process information (van den Bos, Vermunt, & Wilke, 1997); and when the lack of voice is implicit rather than explicit (van Den Bos, 1999). Note that procedural concerns are weaker but rarely eliminated in this research (see Tyler & Huo, 2002). The upshot is not that procedures become unimportant, but rather that people sometimes glean the information they are seeking in other ways.

The fairness heuristic work has been used to interpret research in field settings (Lind, Greenberg, Scott, & Welchans, 2000; Lind, Kulik, Ambrose, de Vera Park, 1993), but to date, most of the direct tests have occurred in the laboratory. At present we lack the kind of “epidemiological” data that would tell us where and when the special conditions created in the laboratory also occur in various applied settings (e.g., receiving outcome information before procedural information). The sheer bulk of field support for fair process effects suggests that these conditions are more likely to be the exception than the rule. So the theory is at present less useful for forecasting public responses than as a source of insights into the judgment processes underlying fairness judgments.

## **CULTURE, DIVERSITY, AND CONSCIOUSNESS**

Procedural justice researchers began looking at the cross-national generality of their findings very early, perhaps due to skepticism about whether favorable views of adversarial procedures reflected an endorsement of what was familiar to Americans. While cultures do appear to differ in their support for adversarialism (e.g., Leung & Lind, 1986), many studies have found that the underlying dynamics of fair process are similar. For example, Lind, Tyler, and Huo (1997) found that relational variables played a similar role in mediating process effects among German, Hong Kong, and Japanese college students. Procedural justice variables were found to have a similar influence on employee attitudes in the US and Bangladesh (Rahim et al., 2001), and in Germany, Hong Kong, and India (Pillai, Williams, & Tan, 2001). Cohn, White, and Sanders (2000) found that voice and impartiality factors in two survey vignettes had similar effects across seven countries.

The considerable convergence across samples has somewhat mitigated the methodological problems inherent in cross-cultural psychology. Cross-national psychological differences can be difficult to interpret, because of considerable within-nation variability and the likely confounding influences of economics, education, socialization, language, and response biases. Morris and Leung (2000) argued for that procedural justice researchers should directly assess important cultural differences at the individual level. For example, Brockner and colleagues (Brockner, Chen, Mannix, Leung, & Skarlicki, 2000) conducted negotiation simulations in the People's Republic of China and in the US. They found that fair

process reduced the importance of outcome satisfaction on willingness to deal with the partner in the future and that this effect was more pronounced for Chinese than US participants. The cross-national difference was explained by the greater tendency of Chinese participants to describe their identity in terms of social interdependence rather than independence. Other studies have shown that used Hofstede's (1980) "power distance" dimension, which taps the perceived acceptability of an arrogant or aloof stance among those high in social power or wealth. Voice effects are stronger among people with a lower tolerance for power distance, as is common in the US and Germany relative to China or Mexico (Brockner, Ackerman, Greenberg, et al., 2001; Tyler, Lind, & Huo, 2000).

There is a much larger literature on group differences – by gender, ethnicity, race, and class – within the United States (see Tyler et al., 1997 for an extensive review). It is important here to distinguish three issues: (1) group differences in mean ratings of procedural justice and outcome satisfaction, (2) group differences in the *meaning* of procedural fairness, as determined by patterns of association with various antecedents and consequences, and (3) differences in the criteria people apply in within- vs. between-group relationships.

Groups do differ in their judgments of the quality of the way they are treated by authorities, their satisfaction with the outcomes they receive, and the perceived legitimacy of government institutions (see Brooks & Jeon-Slaughter, 2001; MacCoun, 2001; Tyler & Huo, 2002). For example, racial and ethnic groups report similar views of the courts, but African Americans consistently report more negative views of police conduct; they are about twice as likely to report low confidence in the police or the view that the police have low ethical standards (Bureau of Justice Statistics, 2003)

But most studies have found striking similarities across demographic groups in the antecedents and consequences of procedural fairness, suggesting that a shared understanding of the concept (Tyler et al., 1997). For example, Lind, Huo, and Tyler (1994) found a remarkably similar pattern of procedural rankings for European, Hispanic, and African American students in a study of different ways of resolving conflicts. Lind, MacCoun et al. (1990) found that procedural fairness had similar effects on litigation ratings effects for white vs. non-white, male vs. female, and high vs. low income litigants. Kulik, Lind, Ambrose, and MacCoun (1996; also see Sweeney & McFarlin, 1997) found that no significant differences in the way male and female tort litigants weighted various criteria in procedural justice ratings. Tyler and Huo (2002) compared a "high-risk" sample of 18-25-year-old minority males to other respondents in a general population survey. Both groups, to nearly an identical degree, emphasized procedural fairness (.84 vs. .77) over outcome favorability (.11 vs. .16) in their ratings of satisfaction with legal authorities (p.158).

This apparently common understanding does not imply a common reliance on procedural fairness in judging authorities. A growing literature on the "scope of justice" shows that people do not always

extend their standards for distributive and procedural justice to relationships outside their own groups (Messé, Hymes, & MacCoun, 1986; Opatow, 1996). As the relational model and fairness heuristic theory would lead us to expect, the nature of the relationship with an authority figure moderates the relative weight citizens give to process vs. outcomes. In a study of American workers and supervisors, and a second study of Japanese and Western English teachers in Japan, Tyler, Lind, Ohbuchi, Sugawara, et al. (1998) found that a relational concern with fair treatment mattered more in within-group conflicts, while an instrumental concern with outcome favorability mattered more in across-group conflicts. Huo, Smith, Tyler, and Lind (1996) surveyed union members of varying ethnicities about conflicts with their supervisors. They found that procedural fairness was generally associated with a willingness to accept supervisor decisions, except among those with a strong minority identification and a weak identification with American society – “separatists.” But such separatists are relatively rare. Analyzing data from a survey of Californians’ encounters with legal authorities, Huo (2003) found that “American” and ethnic subgroup identities were positively rather negatively associated. The key moderator of fair process concerns in this sample was identification with the superordinate group (“America”) rather than ethnic subgroup identity. Similarly, in an Australian survey, Wenzel (2004) found that perceived social norms were positively associated with tax compliance for most people, but that this link was significantly weaker among those who didn’t identify with the mainstream culture.

### ***False Consciousness***

Given the fragility and tension inherent in a multicultural society, evidence for a widely shared understanding of, and reliance upon, fair process concerns – even among those receiving undesired outcomes – would seem to be a cause for celebration. So it may seem churlish to state that many of us also find this somewhat troubling. Though it is beyond the scope of this essay to argue the point, most readers will probably accept the assertion that the distribution of outcomes in our society is correlated with race, ethnicity, gender, and class in ways that strike many of us as patently unfair.

For many scholars, fair process effects are so robust that they raise the spectre of “false consciousness” – the Marxist notion that political and market institutions keep the proletariat ignorant of capitalism’s true nature (Cohen, 1985, 1989; Fox, 1993; Haney, 1991; Jost, 1995). This use of scare quotes is common when contemporary scholars use the term false consciousness, in part due to embarrassment about mid-twentieth century Marxist social science, which most see as discredited and all see as unfashionable. But there is also discomfort with the implicit notion that we scholars can assert that ordinary people are mistaken in their understanding of their social world – a notion that seems politically elitist and epistemologically naïve.

In the procedural justice domain, the concern is that authorities can use the appearance of fair procedure (dignity, respect, voice) as an inexpensive way to coopt citizens and distract them from outcomes that by normative criteria might be considered substantively unfair or biased. Cohen (1985) first raised a concern with the manipulative use of procedural justice in the context of participation procedures for corporate employees. Cohen argued that because employers and employees face a conflict of interests, limited participation may be used as a “strategic device to induce loyalty and commitment.” Surely the most evocative discussion of the manipulative use of fair treatment is Erving Goffman’s classic (1952) essay “On Cooling the Mark Out.” In the world of con artists, Goffman notes, to “cool the mark out” is to “define the situation for the mark in a way that makes it easy for him to accept the inevitable and quietly go home. The mark is given instruction in the philosophy of taking a loss.” Goffman illustrates how a similar process occurs throughout social life; for example, at the complaint departments of retail stores. Goffman’s discussion intriguingly anticipates the importance of status in the relational model of the fair process effect; e.g., he suggests that an effective cooling tactic is to offer the mark

“a status which differs from the one he has lost or failed to gain but which provides at least a something or a somebody for him to become. ...a lover may be asked to become a friend; a student of medicine may be asked to switch to the study of dentistry.... Sometimes the mark is allowed to retain his status but is required to fulfill it in a different environment: the honest policeman is transferred to a lonely beat; the too zealous priest is encouraged to enter a monastery; an unsatisfactory plant manager is shipped off to another branch. Sometimes the mark is "kicked upstairs" and given a courtesy status such as ‘Vice President.’ In the game for social roles, transfer up, down, or away may all be consolation prizes.”

And of course, the potential for fair process cues to manipulate the citizenry has not escaped the attention of those in positions of authority. For example, in the course of a study of ADR in tort litigation, a collaborator of the author attended a judicial settlement conference in which the attorneys, with no clients present, hammered out a settlement they were comfortable with, but the plaintiff’s attorney complained that his client might not accept it because she “wants her day in court.” The judge put on his robe, called her into an empty courtroom, and sat her on the witness chair. After she told her story, she was assented to the settlement. On another occasion, an insurance executive requested a meeting with the author and another justice researcher, asking how he might increase the formality of meetings between clients and insurance adjustors, in order to reduce the rate of contested claims. And examples are legion in world politics. The New York Times recently reported that the Zimbabwe dictator Robert Mugabe has recently allowed opposition candidates to operate with relatively little police

interference; citing evidence for an elaborate plan to rig the upcoming election, the authors note that “many see Mr. Mugabe’s loosening of the reins as a calculated gamble by someone supremely confident of victory” (Wines & LaFraniere, 2002).

In his essay “Let them Eat Due Process,” Haney (1991) argued that the American preoccupation with due process – for example, the Supreme Court’s due process framing of equal protection issues -- diverts us from seriously confronting persistent and large social inequalities. Fox (1993) contends that the process emphasis of the American psychology-and-law community helps perpetuate this political dynamic rather than illuminating it. Fox (1993) decries a “procedural justice trap” by which “psychologists focused on procedural justice too easily dismiss substantive outcomes” and a “legitimacy trap” in which “psychologists accept the dominant assumption that legitimacy should be enhanced in order to gain greater compliance with the demands of legal authorities.”

It is debatable whether these arguments are a fair critique of the psychology and law enterprise as a whole or of the procedural justice literature more specifically. The psychology and law community is to a large extent preoccupied with efforts to challenge legal procedures that are biased or coercive – stacked police lineups, interrogation methods that produce false confessions, the biasing effects of “death-qualified” voir dire on capital trial verdicts – not to mention the effects of race, gender, and social stigma on ostensibly evidence-based legal judgments. Moreover, procedural justice scholars have consistently and explicitly noted the risk of false consciousness in their writings (e.g., Lind & Tyler, 1988; MacCoun, Lind, & Tyler; Tyler et al., 1997). Indeed, Tyler and McGraw (1986) published an entire article on the topic, arguing that “cultural socialization” induces citizens to “focus on opportunities to speak rather than on actual control over decisions.”

Tyler and other procedural justice scholars have long noted the positive social benefits of fair process as a means of promoting social harmony and cooperation in the face of divergent interests and inevitable scarcity. But the procedural justice community has been reticent about exploring the darker side of the fair process phenomenon. For example, Tyler (1990, p. 148) argued that “the study of procedural justice is neutral about the quality of the existing legal system” and “whether those studied ‘ought’ to be more or less satisfied than they are with legal authorities.” He more recently argued that his psychological model “does not address normative issues concerning whether people ought to defer to legal authorities and generally obey the law” (2003, p. 285),

Actually, the gap between normative and empirical analysis is probably more apparent than real for this topic. Implicit in the notion of “false consciousness” is the possibility that there is “true consciousness.” Without plunging into entangling debates about ontology on the one hand or welfare economics on the other, one can simply deploy strategies decision researchers routinely use to assess the accuracy of judgments and beliefs (see Hastie & Raskinski, 1988). The false consciousness question

implies a set of linkages -- between procedural “cues” in the environment and citizen beliefs about process and outcomes; between actual outcomes and citizen beliefs; between procedural cues and the actual determination of outcomes; and so on. Without directly evaluating whether outcomes are just by criteria imposed by the researcher, one can empirically examine these linkages to identify the degree to which citizens have a distorted view of what is actually happening.

One strategy is focus on the citizen, looking for a mismatch between what they want from a procedure and what it actually delivers. But defining “what they want” turns out to be surprisingly tricky. For example, Tyler, Huo, and Lind (1999) report that people assess procedures differently before and after an outcome has been determined. Ex ante, their participants’ procedural preferences reflected an instrumental concern with getting the best outcomes. But ex post, once an outcome had been determined, participants evaluated procedures based on the quality of the treatment they received. It is difficult to avoid the conclusion that the ex-post view may reflect well-known processes of cognitive dissonance reduction. But there are also reasons to think that the pre-decision viewpoint was more valid. Miller (1999) has shown that American citizens overestimate the degree to which their own opinions and behavior are governed by self interest. Similarly, Tyler and colleagues argue that participants’ ex ante views reflected “the myth of self-interest,” whereas their ex-post views were grounded in their actual experience with a process. Which viewpoint should we take to represent citizen beliefs, the ex-ante view or the ex-post view? Psychological processes of distortion can occur both before and after a decision (Brownstein, 2003).

Before we conclude that people are simply muddle-headed, it is worth noting that many psychologists view such mental adjustments as a sign of mental health. Thus, the famed Alcoholics Anonymous “Serenity Prayer” asks for “the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.” The psychological coping literature distinguishes primary control (trying to change one’s circumstances) from secondary control (trying to adjust to one’s circumstances); each of which is necessary for successful psychological development (Skinner, Edge, Altman, & Sherwood, 2003). Taylor and Brown (1988) review a large body of evidence that “overly positive self-evaluations, exaggerated perceptions of control or mastery, and unrealistic optimism are characteristic of normal human thought (p. 193)” and essential to healthy coping. Alloy and Abramson (1979) were the first to report that depressed people are actually more accurate than non-depressed people at perceiving response-outcome contingencies in the environment; they are “sadder but wiser.”

Research on “just world theory” (Hafer & Bègue 2005; Lerner, 1980) and “system justification theory” (see Jost, Banaji, & Nosek, 2004 for a review) shows how these mental adjustments can distort evaluations of objective distributions of outcomes in the environment. Just world researchers have found

that people will engage in victim-blaming to avoid the threatening conclusion that the world is arbitrary and unjust. In a related view, Jost and colleagues define “system justification” as the “process by which existing social arrangements are legitimized, even at the expense of personal and group interest” (p.883) in the service of a psychological need to believe that the status quo is “legitimate and natural.” Jost and his colleagues cite experimental and field evidence for a variety of propositions consistent with the theory; for example: (a) people judge likely events as more desirable than unlikely events; (b) they deploy stereotypes in a manner that justifies the existing status ranking; (c) disadvantaged group members will misperceive or misrecall evidence in a manner that legitimizes their situation, and they will accept readily “placebic explanations” that justifies their status (Kappen & Branscombe, 2001); and (d) when lower status groups perceive the system as legitimate, they show outgroup favoritism rather than the in-group favoritism typically observed in social psychology. The theory might also help to explain why the perception that courts are biased is more common among higher- rather than lower-income African Americans (Brooks & Jeon-Slaughter, 2001). The role of system justification processes in procedural justice effects is still unclear, and there are reasons to believe the two approaches are dealing with two different set of phenomena. First, many of the most robust procedural fairness effects have involved civil disputes between pairs of ordinary citizens, where outcomes are equivocal with respect to their implications for the system. Second, the work by Huo and others suggests that ethnic minorities are not more likely to endorse procedural fairness, but – at least among separatists – less so.

Another strategy is to examine how citizens respond to procedures when their linkage to outcomes is made more explicit *ex ante*. Perhaps the most direct and powerful analysis of the issue is a remarkable experiment by Lind, Kanfer, and Earley (1990; also see Avery & Quiñones, 2002; McFarlin & Sweeney, 1996). Correlational analyses by Earley and Lind (1987) suggested that the voice effect is not mediated by perceptions of perceived control, contrary to Thibaut and Walker’s (1975) interpretation. To test this more directly, Lind and colleagues enrolled students in a work simulation task in which the experimenter determined the participants’ workload. They were randomly assigned to one of three voice conditions. In a control condition, participants had no opportunity to offer the experimenter their opinion about what would be a reasonable workload goal. In a traditional voice condition (“predecision voice”), the experimenter described his tentative decision – a demanding work schedule -- but encouraged the participants to express their views. After hearing their opinions, he announced as his final decision a work schedule more in line with student opinions. In a “postdecision voice” condition, the experimenter announced his decision, stated that it was final and not subject to change, but said that he was interested in their views and that he would welcome their comments. After hearing them out, he restated his initial decision, using what the authors call “a calm and reassuring tone.” Lind and colleagues found that although predecision voice produced greater fairness ratings than postdecision voice, both conditions

produced significant increases in perceived fairness and perceived control over the no-voice condition. The authors argued that “It is clear that, at least within the context and subject population we studied, fairness judgments are enhanced by the opportunity to voice opinions even when there is no chance of influencing the decision.” Explicitly noting the risk of false consciousness, they suggest that a misattribution of control “could lead the individuals in question to believe that the decision-making procedure was fair even though, by objective criteria, it is patently unfair. ... If the perception of fairness is enhanced even in the face of the relatively straightforward denial of control involved in our postdecision voice condition, voice-enhanced fairness is all the more likely to occur in situations where a decision maker actively hides the ineffectiveness of input-conditions that may well be more common in the real world than is postdecision voice.”

Work on the psychology of the citizen sheds important light on the question of false consciousness, but perhaps greater progress can be made if there is a shift in focus from the citizen to the authority. How are procedures selected, how are they represented to citizens, and when are they deployed (see Edelman, Erlanger, & Lande, 1993; Edelman, Uggem, & Erlanger, 1999)? When authorities choose “empty” symbolic procedures, do they do so out of their own symbolic needs or for self-interested instrumental means? These are empirical questions that can be assessed via experimental simulations, observational field work, and statistical analysis.

The neglect of the dark side of procedural justice is unfortunate. As a psychological dynamic, procedural fairness is clearly a double-edged sword. Our poignant desire for voice and dignity makes it possible to promote cooperation and tolerance in a diverse society facing uncertainty, scarcity, and inevitable conflicts of interest. But these same needs leave us potentially vulnerable to manipulation and exploitation by those who control resources and the processes for distributing them. The scientific study of procedural justice provides a non-ideological tool for studying the malevolent as well as the benevolent aspects of fair treatment.

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