

2005

## What's Just About the Criminal Justice System? A Psychological Perspective

Larry Heuer

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/jlp>

---

### Recommended Citation

Larry Heuer, *What's Just About the Criminal Justice System? A Psychological Perspective*, 13 J. L. & Pol'y (2005).  
Available at: <https://brooklynworks.brooklaw.edu/jlp/vol13/iss1/11>

This Article is brought to you for free and open access by the Law Journals at BrooklynWorks. It has been accepted for inclusion in Journal of Law and Policy by an authorized editor of BrooklynWorks.

# WHAT'S JUST ABOUT THE CRIMINAL JUSTICE SYSTEM? A PSYCHOLOGICAL PERSPECTIVE

*Larry Heuer\**

## INTRODUCTION

This article explores the question, “What is just about the criminal justice system?” from the vantage point of social psychological research and theory concerning procedural justice. Part I of this article provides a brief historical overview of social psychological theorizing about procedural justice and describes a recent study of procedural justice in the criminal justice context. Part II poses several challenges to contemporary procedural justice theories, including challenges to these theories’ assumptions about the meaning of procedural fairness and to their generalizability to all actors in the criminal justice system. This article concludes that new research models building upon traditional procedural justice theories have the potential to improve the quality of justice currently dispensed by the criminal justice system.

---

\* The author is an Associate Professor of Social Psychology in the Department of Psychology at Barnard College, Columbia University in New York, NY. The author would like to thank his co-authors, Steven Penrod for his work on decisionmakers versus decision recipients, Steven Stroessner for his work on a multi-motivational model, Jason Sunshine, Eva Blumenthal, Amber Douglas, and Tara Weinblatt for their work on deservingness, and his many Barnard students who helped to plan and execute these studies. The author would also like to thank Larry Solan for including him on this panel.

## I. THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE

John Thibaut and Laurens Walker's seminal theory of procedural justice suggested that fair procedures influenced disputants' satisfaction with the legal system, regardless of whether the outcomes they received were fair or personally beneficial.<sup>1</sup> Importantly, their theory of procedural justice also proposed that disputants will perceive that they have received fair treatment when they are permitted to communicate their views to decisionmakers and they believe that their input is instrumental to shaping fair outcomes.<sup>2</sup>

While Thibaut and Walker's claim that procedures possess value independent of outcomes is well supported by a considerable body of research, other aspects of this theory are less well supported, particularly the assertion that instrumentality is key to procedural fairness. For example, subsequent studies have shown that having a "voice" in the decision-making process, even absent the belief that it was instrumental in affecting the outcome, still has a salutary effect on participants' perceptions that they have been treated fairly.<sup>3</sup> Such findings led justice researchers to ask, "What is it about the opportunity for voice that increases procedural fairness and increases disputants' satisfaction with the way in which their conflicts were resolved?"

*A. The Group Value Theory of Procedural Justice*

Tom Tyler and E. Allan Lind's group value theory represents the most influential answer to this question.<sup>4</sup> Lind and Tyler

---

<sup>1</sup> JOHN THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS 118 (1975); John Thibaut & Laurens Walker, *A Theory of Procedure*, 66 CAL. L. REV. 541, 551 (1978).

<sup>2</sup> THIBAUT & WALKER, *supra* note 1; Thibaut & Walker, *supra* note 1.

<sup>3</sup> E. Allan Lind et al., *Voice, Control, and Procedural Justice: Instrumental and Non-Instrumental Concerns in Fairness Judgments*, 59 J. PERSONALITY & SOC. PSYCHOL. 952, 956 (1990).

<sup>4</sup> E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988); Tom R. Tyler, *The Psychology of Procedural Justice: A Test of the Group-Value Model*, 57 J. PERSONALITY & SOC. PSYCHOL.

## CRIMINAL LAW AND PROCEDURAL JUSTICE 211

reasoned that if their inquiry began with the assumption that disputants were motivated by more than just the pursuit of fair and beneficial outcomes (the starting assumption of Thibaut and Walker's theory), researchers could begin to understand why non-instrumental voice mattered for procedural fairness. The group value model suggests an important role for group identification in shaping individuals' satisfaction with the judicial process. This theory assumes that group identification is psychologically rewarding and that individuals are motivated to establish and maintain group bonds. A fundamental claim of the theory is that being listened to is *symbolically* important, as it reveals that group authorities value the individuals' standing in their social groups. This belief about standing enhances perceptions of procedural fairness.

Lind and Tyler identified three criteria that individuals use to judge whether they have been treated fairly: trustworthiness, neutrality, and standing.<sup>5</sup> Trustworthiness refers to the belief that authorities care about individuals and have their best interests in mind. Neutrality refers to unbiased decision making, and standing refers to being treated politely, with dignity, and with respect for the one's rights. Lind and Tyler's theory asserts that the presence of trust, neutrality, and standing signifies to individuals that they are valued members of their social groups, which, in turn, enhances their sense of procedural fairness.

*B. The Application of Procedural Justice Theories to the Criminal Justice Context*

Both Thibaut and Walker's theory of procedural justice and Lind and Tyler's group value theory predict that the presence of procedural fairness increases important socio-legal criteria, including satisfaction with outcomes, authorities, institutions, and compliance with the law. However, there are competing views about the predictors of satisfaction and compliance. For example,

---

830, 830-39 (1989) [hereinafter *The Psychology of Procedural Justice*]; see also Tom R. Tyler & E. Allan Lind, *A Relational Model of Authority in Groups*, in *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 25 (M. P. Zanna ed., 1992).

<sup>5</sup> Tyler, *The Psychology of Procedural Justice*, *supra* note 4, at 831.

distributive fairness theories predict that fair outcomes increase satisfaction and compliance, and economic theories of human behavior predict that beneficial outcomes increase satisfaction and compliance.

Researchers have questioned which of these theories most accurately predicts satisfaction with the legal system. A recent study of citizens' trust and confidence in the court system is illustrative of efforts to test these competing views. The *Hearst National Survey on the Courts*, a telephone survey of 1,826 Americans conducted by the National Center for State Courts, asked respondents about their general impressions of the courts, judges, judicial decision making, and the legal process, with an emphasis on the respondents' trust and confidence in the legal system.<sup>6</sup> Researchers also asked respondents more targeted questions about fair treatment, fair outcomes, and beneficial outcomes in order to gain an understanding of the factors that influenced trust and confidence in the courts. Overall, this study found public trust to be quite high, with 75 percent of the respondents reporting that they trusted the courts either a "great deal" or "some," and 25 percent reporting that they trusted the courts "only a little" or "none."<sup>7</sup>

Tom Tyler analyzed the Hearst data to compare the ability of two different types of concerns to predict the respondents' trust and confidence in the courts.<sup>8</sup> The first type of concern centered on the quality of treatment people received from the courts. This concern, which is essentially a measure of procedural fairness, was evaluated through respondents' perceptions of bias, standing, and trustworthiness in the courts.

The second type of concern related to the court's performance.

---

<sup>6</sup> National Center for State Courts, *How the Public Views the State Courts: A 1999 National Survey*, presented at The National Conference on Public Trust and Confidence in the Justice System, (May 14, 1999), available at [http://www.ncsconline.org/WC/Publications/Res\\_AmtPTC\\_PublicViewCrtsPub.pdf](http://www.ncsconline.org/WC/Publications/Res_AmtPTC_PublicViewCrtsPub.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> T. R. Tyler, *Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want from the Law and Legal Institutions?*, 19 BEHAV. SCI. & L. 215, 215-35 (2001).

## CRIMINAL LAW AND PROCEDURAL JUSTICE 213

The performance measures focused on outcome fairness (e.g., whether the courts pay adequate attention to cases, whether the courts favor corporations, and whether judges' decisions are influenced by political considerations) and costs (e.g., court fees, the slow pace of justice, and demands on personal time). These performance measures are essentially concerns with outcomes, as defined by distributive fairness theories or economic theories of satisfaction.

Figure 1 summarizes Tyler's findings. The top half of the figure displays the beta coefficients from a simultaneous regression equation predicting people's trust and confidence (essentially, the larger the coefficient, the more important the variable is as a predictor). This analysis reveals that: (a) treatment variables (procedural fairness) fare better than performance variables (outcomes) as predictors of trust and confidence; and (b) of the procedural variables, the measures of trustworthiness and standing best explain people's trust and confidence in the courts. The bottom half of the figure demonstrates a second means of comparing the importance of treatment concerns with performance concerns for trust and confidence in the courts. The predictive utility of either set of concerns is ascertained when one set is entered in the regression equation *after* the other set has already been entered. The result is an indication of the variability in the dependent measure (trust and confidence) that is *uniquely* explained by each set of variables, or by how much each set explains *beyond what we knew from the other set*. Specifically, this analysis shows that treatment concerns explained 15 percent of the variability in people's trust and confidence beyond what was already explained by performance concerns, whereas performance concerns explained only 3 percent of the variability in people's trust and confidence beyond what was already explained by treatment concerns.

Overall, these analyses reveal that procedural fairness concerns, rather than outcomes, are the best predictors of people's trust and confidence in the courts. In other words, these analyses, like much of the procedural justice research that preceded this study, support the predictions about satisfaction asserted by procedural fairness theories, such as the group value theory.

## II. THREE CHALLENGES TO THE GENERALIZABILITY OF THE GROUP VALUE THEORY

Thus far, this article has provided a brief historical summary of procedural justice theories and summarized one test of the group value theory. This test supports the broad claim that respect increases trust and confidence in the courts because of its effect on people's beliefs about their standing in valued social groups. This article will now briefly summarize several lines of research that suggest some limitations on the generalizability of this claim. First, the article will describe several studies suggesting that respect is less important for decisionmakers (i.e., judges) than for decision recipients. Second, it will summarize studies suggesting that beliefs about deservingness moderate the influence of respect on fairness. Finally, it will summarize several studies concerning the relationship between respect and fairness. These studies suggest that while the group value theory is correct to assert that respect matters because of its implications for people's beliefs about their standing in valued groups, it matters for other reasons as well.

### *A. Decisionmakers Versus Decision Recipients*

The first challenge derives from a series of studies that suggest a limitation on the extent to which the influence of the group value variables of trust, neutrality, and standing generalize to different populations.

This research studied the concept of fairness among judges.<sup>9</sup> The project was prompted by a paper by Michael Saks in which Saks attempted to model the decision-making processes of Supreme Court justices in Fourth Amendment search and seizure cases.<sup>10</sup> Based in part upon the writings of the justices in search and seizure cases, Saks's model predicted that the justices would

---

<sup>9</sup> Larry Heuer et al., *Authority-Subordinate Disparities in the Meaning and Importance of Procedural Fairness*, presented at the APLS/EAPL International Interdisciplinary Conference (July 9, 2003) (on file with author).

<sup>10</sup> Michael J. Saks, *Social Risk Benefit Decision Making by Judges*, presented at the 59th Annual Meeting, Midwestern Psychological Association (on file with author).

*CRIMINAL LAW AND PROCEDURAL JUSTICE* 215

rely upon a utilitarian balancing test to reach their decisions. Under this model, each justice would seek to strike the appropriate balance between the benefits to society of conducting a search and the infringements on the searched individual's rights that would result. Saks's paper reported the failure of the data to support this utilitarian balancing model of judicial decision making.

One interpretation of Saks's finding was that his research revealed the inferiority of an outcome-driven model. Indeed, procedural justice research from the past thirty years suggests that in order for individuals (presumably including Supreme Court justices) to approve of a particular procedure, such as the search procedures examined by Saks, the procedure must be conducted fairly. In other words, how fairly the procedure is performed is expected to be of greater significance than the outcome of that procedure (societal benefit or infringement on individual rights) in predicting satisfaction. With this in mind, research was undertaken among a sample of judges to determine what carries more weight in the judicial decision-making process, procedural fairness or a variant of outcome concerns, such as a utilitarian balancing test.

It is noteworthy that the overwhelming majority of procedural justice research has focused on the reactions of subordinates, or decision recipients, rather than on the authorities, or decisionmakers. Still, there are reasons to question whether well-established procedural justice predictors can be generalized to decisionmakers. For example, the group value theory's finding that standing shapes participants' perceptions of fairness may not extend to decisionmakers, who, by virtue of having attained a position of authority, might be relatively unconcerned with their group standing. Judges, for example, might be more concerned with other matters, such as whether a particular legal procedure benefits society.

This question was examined in two experiments involving actual judges. The first study surveyed a sample of federal appellate court judges in the Midwest. These judges read a fairly lengthy summary of a hypothetical search and seizure case in which an airline passenger was arrested after his luggage was searched. The passenger was ultimately convicted of a crime and was appealing that conviction on the grounds that the search



violated his Fourth Amendment rights.

The summary of the evidence supplied to the judges incorporated information about both procedural fairness and societal benefits. Specifically, the experiment manipulated the search procedure employed by the police officers and the result of their search. Half of the judges read about a search procedure that was conducted fairly; the police were polite, they immediately identified themselves as police officers, and they gave the passenger an opportunity to explain his side of the story. The remaining judges read about an unfair search procedure; the police were rude and hostile, they failed to identify themselves as police officers until late in the procedure, and they neglected to give the passenger an opportunity to explain his side of the story.

This procedural manipulation was crossed with a manipulation of the societal benefit resulting from the search. In the high benefit scenario, the police found a gun in the passenger's bag. This information was presented with evidence that if the technology the police had employed in the search ("voice-stress analysis") was used more often, it could cut the rate of attempted airline hijackings by one-half, from 130 per year to about sixty-five. In the low benefit scenario, the police found either a joint of marijuana (Study 1) or stolen credit cards (Study 2) in the passenger's bag. This information was similarly presented with evidence that if voice-stress technology was used more often, the rate of airline hijackings would be cut in half, but from a high of only four per year to about two.

After reading the evidence in the summary, the judges answered questions concerning the societal costs and benefits of the search, the respectfulness and neutrality of the police officers performing the search, and the extent to which the searched passenger's rights were infringed. The judges also evaluated the fairness of the police procedures and the fairness of the search outcomes. Finally, the judges indicated how they would rule on the defendant's appeal of his conviction.

Table 2 reports the predictors of the judges' final rulings. The table shows the regression coefficients that predict the judges' decisions in each of the three steps of a hierarchical regression analysis. The first step, which examines the influence of the two

## CRIMINAL LAW AND PROCEDURAL JUSTICE 217

manipulated variables and their interaction, produced a result that is extremely rare in procedural justice research—the judges' decisions (that is, their procedural evaluations) are driven almost exclusively by the outcome manipulation and are relatively unaffected by the procedural manipulation. In other words, the judges based their decisions on the outcome of the search procedure rather than on the procedure itself.<sup>11</sup>

In the second step of the analysis, the measured variables were added to the set of predictors. Again, the results demonstrate that outcome concerns have a greater influence on judges' rulings than do procedural concerns. Neither the level of respect nor the bias that the police displayed toward the defendant significantly predicted the judges' decisions. Finally, in the third step, the judges' overall assessments of the fairness of the procedure and its outcome were entered as predictors. Once again, the outcome concerns are more influential than procedural ones. In sum, in every step of this analysis, the study's results are contrary to the consistent finding that procedural fairness concerns trump outcome concerns.

In other analyses examining the judges' beliefs regarding the fairness of the search procedure and fairness of the outcome in this hypothetical police-citizen encounter, the same general picture emerged: The judges perceived the procedures and outcomes as fair according to the search outcomes rather than the search procedures.<sup>12</sup> These findings were replicated in a second experiment, which was conducted among state circuit court judges.<sup>13</sup> Overall, these findings suggest that the meaning of fairness among judges is considerably different from what numerous earlier studies of different populations (decision recipients) have suggested. Notably, outcome concerns had a greater influence among judges than the procedural criteria of trust, neutrality, and standing suggested by Tyler and Lind's group value theory.

---

<sup>11</sup> This is not an effect of the magnitude of the manipulations; manipulation checks show roughly equivalent sizes of the two manipulations.

<sup>12</sup> Heuer et al., *supra* note 9.

<sup>13</sup> *Id.*

Since neither of the experiments involving judges included a manipulation of the participant's role (decisionmaker versus decision recipient), a laboratory experiment was conducted among undergraduate students to examine the effect of the participants' role on the meaning and the importance of procedural fairness. Participants in this study were randomly assigned either to the role of decisionmaker or decision recipient. Consistent with our interpretation of the studies among actual judges, this study found that decision recipients oriented primarily to procedural information, while decisionmakers oriented primarily to societal benefits.

In sum, the findings of these studies suggest an interesting paradox: While judges and the citizens who appear before them agree that the pursuit of fairness is an important goal in the courts, they disagree about the fairness criteria that judges should employ in their decision making. This discord may decrease citizens' satisfaction with the judicial process.

*B. The Role that Deservingness Plays in Shaping Perceptions of Fairness*

The group value theory predicts that respectful treatment enhances procedural fairness by communicating a positive message about one's standing in a valued social group. Interactional justice theorists have similarly posited a link between polite and caring communication and procedural justice.<sup>14</sup> Although the link between polite and respectful treatment and

---

<sup>14</sup> See Robert J. Bies, *The Predicament of Injustice: The Management of Moral Outrage*, in RESEARCH IN ORGANIZATIONAL BEHAVIOR 9 (L. L. Cummings & B. M. Staw eds., 1987); see also Robert J. Bies & Joe S. Moag, *Interactional Justice: Communication Criteria of Fairness*, in RESEARCH ON NEGOTIATIONS IN ORGANIZATIONS 43 (R. J. Lewicki, B. H. Sheppard & M. H. Bazerman eds., 1986); see also Jerald Greenberg, *The Social Side of Fairness: Interpersonal and Informational Classes of Organizational Justice*, in JUSTICE IN THE WORKPLACE: APPROACHING FAIRNESS IN HUMAN RESOURCE MANAGEMENT 79-103 (R. Cropanzano ed., 1993); Jerald Greenberg, *Stealing in the Name of Justice: Informational and Interpersonal Moderators of Theft Reactions to Underpayment Inequity*, 81 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 54, 81-103 (1993).

## CRIMINAL LAW AND PROCEDURAL JUSTICE 219

procedural justice is well established in legal as well as numerous other social contexts, my colleagues and I have argued that these theories do not clearly establish the psychological link between respectful treatment and fairness.<sup>15</sup> An understanding of this link might alter the role we attribute to respectful treatment in the criminal justice system.

Unlike the distributive fairness theories that preceded them, procedural fairness theories have not clearly specified the role that people's beliefs about their deservingness plays in the relationship between respectful treatment and fairness. For example, equity theory distinguishes between absolute outcomes and deserved outcomes with regard to fairness judgments.<sup>16</sup> According to J. Stacey Adams, less favorable outcomes are not always perceived as unjust because the individuals who received more favorable outcomes are sometimes perceived as having *deserved* them.<sup>17</sup> Similarly, based on her study of the experiences of working women, Faye Crosby concluded that two conditions were key to explaining why some women felt deprived relative to men while others did not.<sup>18</sup> Women who experienced relative deprivation received both an unwanted outcome and one they believed was undeserved.

A similar logic could be employed to predict that respectful treatment will affect perceived fairness most strongly when individuals feel that they deserve respectful treatment. This prediction begs the question of what criteria individuals use to make judgments about deservingness. Based on existing theory,<sup>19</sup>

---

<sup>15</sup> Larry Heuer et al., *A Deservingness Approach to Respect as a Relationally Based Fairness Judgment*, 25 PERSONALITY & SOC. PSYCHO. BULL. 1279, 1280 (1999); see also J. Stacey Adams, *Inequity in Social Exchange*, in 2 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 267 (L. Berkowitz ed., 1965); E. Walster & Ellen Berscheid, *New Directions in Equity Research*, 25 J. PERSONALITY & SOC. PSYCHOL. 151, 155 (1973).

<sup>16</sup> Walster & Berscheid, *supra* note 15, at 155.

<sup>17</sup> Adams, *supra* note 15, at 273.

<sup>18</sup> FAYE CROSBY, *RELATIVE DEPRIVATION AND WORKING WOMEN* (Oxford University Press 1982).

<sup>19</sup> Norman Feather, *An Attributional and Value Analysis of Deservingness in Success and Failure Situations*, 31 BRIT. J. SOC. PSYCHOL. 125, 125-45 (1992); MELVIN LERNER, *THE BELIEF IN A JUST WORLD: A FUNDAMENTAL*

we proposed that people feel more or less entitled to respectful treatment based on their assessment of the value of their behaviors and their responsibility for those behaviors. For example, in one laboratory study, undergraduate participants read vignettes that described their behavior in class and their treatment during a meeting with their professor at the midpoint of the semester.<sup>20</sup> As predicted, the participants felt that they were most entitled to respect when they had behaved positively in class and when they were personally responsible for that behavior (e.g., their devoted effort consistently led to mastery of the material and timely completion of course assignments). Similarly, the participants felt that they were least entitled to respect when they were personally responsible for negatively valued behaviors (e.g., laziness led to poor class preparation and tardiness in the completion of course assignments). The study showed, therefore, that fairness judgments are based on the match between the amount of respect deserved and the amount of respect received.

These findings were replicated in several subsequent studies. In a second laboratory study employing a nearly identical procedure, the same relationship between respect, deservingness, and fairness was found with regard to *observers'* judgments of the manner in which others were treated.<sup>21</sup> Another study, undertaken in part to test the deservingness model in a natural setting, surveyed several hundred New Yorkers regarding their interactions with others.<sup>22</sup> The study hypothesized that the participants' self-esteem would moderate the degree to which they felt entitled to respect from others. As predicted, the survey found that among respondents with high levels of self-esteem, respect was more important for fairness.

In a final study, 516 New Yorkers were asked to recall an encounter with a police officer. About half of the participants were surveyed while waiting in the courtroom for their misdemeanor cases to be called; the others were approached in various areas

---

DELUSION (Plenum 1980).

<sup>20</sup> Heuer et al., *supra* note 15, at 1279-92.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

*CRIMINAL LAW AND PROCEDURAL JUSTICE* 221

throughout New York City. In order to test the deservingness prediction, participants were asked a variety of questions, including whether they deserved to be treated respectfully by the police and whether they were, in fact, treated respectfully by the police.<sup>23</sup>

The study's results support the group value theory's prediction that respect plays a role in determining fairness. As respectful treatment increased, so too did participant reports of fair treatment. However, in support of our deservingness prediction, there was a clear and substantial increase in our ability to predict participant fairness ratings when our model included a test of the interaction between respect deserved and respect received. Participants were more likely to report fair treatment when there was a match between the respect they felt they deserved and the respect they received. Thus, fairness was high when deservingness and respect were both high, but also when deservingness and respect were both low. The increase in fairness resulting from matches between deservingness and respect is not predicted by and cannot be easily explained by the group value theory.

These findings suggest that there is a more nuanced relationship between respect and fairness than the group value theory and interactional procedural justice theories have acknowledged. Rather than predicting a direct relationship between respect and fairness, our research suggests that litigants do not perceive judicial disrespect for inappropriate behavior as unfair and that, in fact, observers perceive disrespectful treatment as fair under certain circumstances.

*C. A Multi-Motivational Model of Procedural Fairness*

According to the group value theory, respect enhances fairness because it communicates to recipients that group authorities value the recipients' group standing. The group membership of the individuals engaged in an encounter, therefore, should moderate

---

<sup>23</sup> Jason Sunshine & Larry Heuer, *Deservingness and Perceptions of Procedural Justice in Citizen Encounters with the Police*, in *THE JUSTICE MOTIVE IN EVERYDAY LIFE* 397 (Michael Ross & Dale T. Miller eds., 2002).

the effect of respect on fairness. In other words, polite and respectful treatment should be more important for fairness in in-group encounters than in out-group encounters. Furthermore, beliefs about the meaning of respect with regard to one's in-group standing should mediate the effect of respect on fairness. Put another way, the effect of respect on fairness should occur because of its effect on beliefs about group standing, which, in turn, enhance fairness.

Although these predictions about the role of group membership have implications for the importance of respectful treatment in fostering litigant trust and confidence in the courts, there are few, if any, experimental tests of these predictions.<sup>24</sup> Two recent studies suggest that the effect of respect on fairness and, hence, on trust and confidence, is even more pervasive than is predicted by the group value theory. These studies suggest that respect matters as much, or even more, for out-group encounters than for in-group encounters. In two field surveys, respondents were asked to identify several social groups to which they belonged and that they highly valued (e.g., membership in groups based on ethnic, political, professional, religious, or gender identification). Half of the respondents were then asked to think about an encounter with someone who was also a member of their *most* valued group. The remaining respondents were asked to think about an encounter with someone who was not a member of their valued groups. Finally, all of the respondents were asked to answer a series of questions about these encounters, including questions about how respectfully and fairly they were treated by the other individual. Based on the group value theory's assertions about the way in which group standing moderates the meaning of respect, we predicted that respect would be more important for fairness among respondents who reflected on in-group encounters than among those who reflected on out-group encounters. However, contrary to our predictions, respect was equally important in both in-group and out-group encounters.

---

<sup>24</sup> Larry Heuer & Steven J. Stroessner, *Testing a Multi-Motivational Model of Procedural Fairness*, presented at the Justice Pre-Conference of the Annual Meeting of the Society for Personality and Social Psychology (Feb. 5, 2003) (on file with author).

## CRIMINAL LAW AND PROCEDURAL JUSTICE 223

A second study employed a similar approach and compared the importance of fairness in participants' encounters with members of *liked* groups and *disliked* groups. This study allowed for a stronger manipulation of the group's value to the individual. Again, the study found respect to be equally important, regardless of the group's value to the individual. Finally, a rather elaborate laboratory study was conducted in which an undergraduate population was divided into various groups. The experiment varied the students' attachment to the groups so that each participant thought very highly of his own group, but disliked the out-group. Again, the study found that group membership did not moderate the effect of respect on perceptions of fairness. Thus, in all three studies, respect had a considerable influence on perceptions of fairness, regardless of whether the encounter was with someone who was, or was not, a member of the participant's valued groups.

Based on these studies and a review of the relevant theories in social psychology, we speculated that the effect of respect on fairness extends beyond in-group encounters because it has implications beyond those for in-group standing. Although the motive for positive in-group standing seems likely to be an important part of the respect-fairness relationship, as the group value theory asserts, we theorized that other motives likely matter as well. We predicted that in encounters with out-group members, respect continues to matter because people are also motivated to believe that members of other groups value their groups. For example, in an encounter between two strangers—a young black male civilian and a middle-aged white police officer in New York City—it is likely that neither individual thinks of the other as a member of the same highly-valued social group. Regardless, the civilian may still be highly sensitive to whether the officer treats him with respect because respect communicates an important message about what the police officer thinks of the standing of the civilian's social group.

This prediction about the importance of *inter-group* standing is supported in several studies.<sup>25</sup> For example, in a laboratory study among undergraduates, participants were given the task of writing

---

<sup>25</sup> *Id.*



a brief essay about the relationship of their college (Barnard College, a small, liberal arts college in New York City) with its university affiliate (Columbia University).<sup>26</sup> Afterward, participants were misled to believe their essays had been exchanged with those of other students and that each of them was to provide feedback on the other student's essay. Next, the experiment varied (a) whether the feedback the student received on her own essay came from a student who was a member of her in-group (Barnard College) or an out-group (Columbia University); and (b) whether the feedback was issued in a respectful or disrespectful manner. Finally, all participants answered questions about what they believed their evaluator thought of their in-group standing (their standing in the Barnard College student community) and their group's standing more generally (how favorably the evaluator viewed Barnard College). The key dependent measure in this study was the students' reports of how fairly they had been treated by their student evaluators.

Two of the study's findings strongly support our prediction that respect affects fairness for reasons other than its implications for one's in-group standing, including its implications for the standing of one's group. First, participants' perceptions of their evaluators' assessments of their in-group standing and participants' perceptions of their evaluators' assessments of their group's standing *both* independently affected fairness. Thus, as the group value theory predicted, when participants interpreted respectful treatment as a favorable evaluation of their in-group standing (an *intra-group* evaluation), fairness increased. Fairness similarly increased when participants interpreted respectful treatment as a favorable evaluation of their group (an *inter-group* evaluation). Second, beliefs about inter-group standing mediated the effect of respectful treatment on perceptions of fairness. Thus, respectful treatment increased participants' perception of their inter-group standing, which in turn increased their sense of fairness.

The study described above, involving surveys of New Yorkers about their encounters with New York City police officers, also included a test of the inter-group component of our multi-motive

---

<sup>26</sup> *Id.*

*CRIMINAL LAW AND PROCEDURAL JUSTICE* 225

model. The civilians were asked what the officer's treatment of them indicated about the officer's views about their standing in their own valued groups (their intra-group standing), as well as the officer's views of their group (their inter-group standing).<sup>27</sup> As predicted by our multi-motive reasoning, higher reports of fairness resulted when participants believed the officer thought highly of either their intra-group or their inter-group standing. This study demonstrates that our multi-motive reasoning extends to the criminal justice context.

While these findings have clear implications for psychological theorizing about fairness, it is reasonable to inquire into their practical significance. Why, for example, should a judge, or other court personnel, be concerned about the motivational underpinnings of the effects of respect on fairness? At the outset, this research indicates that the importance of respect is in no way diminished in encounters between individuals from very different social groups. In fact, our work suggests that respect is especially important in these encounters. Beyond this, further answers depend on whether other motives are shown to moderate or mediate the relationship between respect and fairness. In addition to the two motives discussed here, our own work has shown that a selfish motive to maximize outcomes can also influence the importance of respect. For example, because the stakes are high for participants in a criminal justice context, respectful treatment might affect fairness because of what it communicates about the likelihood that the participants will obtain valued outcomes. If this is so, then it reveals an additional contextual variable that moderates the impact of respect on fairness in the criminal justice setting, and thus another reason for judges and other courtroom personnel to treat litigants with respect whenever it is appropriate.

---

<sup>27</sup> While I reported above that matches between beliefs about how much respect was deserved and how much respect was received increased fairness, this study actually asked participants about their beliefs regarding the degree to which the officer should respect their standing within their valued groups (their in-group standing) and how much they believed the officer should respect their group vis-à-vis other groups (their inter-group standing).

## CONCLUSION

This article began by asking, “What is just about the criminal justice system?” and proceeded to suggest several responses. First, discussions of justice in the criminal justice system should recognize the importance of procedural fairness to participants in and observers of the criminal justice system. Fair treatment enhances satisfaction with the criminal justice system and improves perceptions of the legitimacy of the law and of the authorities who enforce it. Second, the group value theory and interactional justice theories have profoundly influenced our understanding of the meaning of procedural fairness. Perceptions of fair treatment are heavily influenced by symbolic criteria, such as politeness and respect. Third, authorities and decisionmakers, such as judges, attorneys, and law enforcement officers, may hold different notions of procedural fairness than subordinates and decision recipients, such as defendants. Thus, authorities may place greater emphasis on societal costs and benefits than subordinates, who are more concerned with symbolic criteria, such as respect. Fourth, the relationship between respect and fairness is not a straightforward hedonic relationship, such that increases in respect lead directly to increases in fairness. Rather, individuals’ beliefs about how much respect they *deserve* play a role in shaping perceptions of fairness and determining whether they have been treated respectfully. Finally, although respectful treatment clearly communicates a message about standing within valued social groups, other motives also influence the relationship between respect and fairness. Respect plays as powerful a role in determining perceptions of fairness in encounters with out-group members as in encounters with in-group members. While research has begun to explore the limitations of current justice theories in psychology, considerable additional work will be necessary to clarify the theoretical and practical applied significance of these more recent findings.

*CRIMINAL LAW AND PROCEDURAL JUSTICE*      227

Table 1.  
Regression model of variables predicting U.S. citizens' confidence  
in the courts\*

Predictor Variable	Beta
Treatment (Procedural Fairness)	
Bias	.12
Fair Procedure	.35
Performance (Outcomes)	
Structural Problems	.14
Cost	.07

Unique Contribution

Treatment	.15
Performance	.03

\* Adapted from Tyler (2001)

---

Table 2.  
Regression model of variables predicting judges' decisions in  
fictitious search and seizure case

Predictor Variable	Beta			
		Block 1 <sup>†</sup>	Block 2 <sup>††</sup>	Block 3 <sup>†††</sup>
Procedure	.06			
Outcome	.45 <sup>***</sup>			
Procedure      x    Outcome	-.10			
Societal Benefits			.38 <sup>**</sup>	
Societal Costs			.11	
Respect			.31	
Bias			.09	
Infringe			.19 <sup>*</sup>	
Fair Procedure				.15
Fair Outcome				.39 <sup>*</sup>

<sup>†</sup> df = 63; <sup>††</sup> df = 58; <sup>†††</sup> df = 56  
<sup>\*</sup> p < .05; <sup>\*\*</sup> p < .01; <sup>\*\*\*</sup> p < .001

---