

Decision Makers and Decision Recipients: Understanding Disparities in the Meaning of Fairness

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Since World War II, psychologists have devoted considerable attention to understanding the factors that shape people's satisfaction with the outcomes of social or economic exchanges—outcomes of events not unlike the encounters occurring between judges and litigants in civil and criminal courtrooms, encounters between police officers and civilians, or encounters between mediators and disputants in alternative dispute resolution centers throughout the United States every day. In one classic early study, it came as somewhat of a surprise when it was discovered that satisfaction was not easily explained by economic theories of human behavior.¹ This finding launched an inquiry guided by theories and empirical research that has continued to this day.

In this article, we offer an overview of the major developments in these theories and the accompanying research with an eye toward their implications for understanding the factors that shape citizens' satisfaction with the U.S. legal system. Then, we note that the vast majority of this research has focused primarily on only a portion of the individuals who are engaged in the legal encounters that are taking place—the subordinates (the litigants, civilians, and disputants whose outcomes are being decided) rather than the authorities (the judges, police officers, and mediators who are deciding the cases), and we describe some recent research suggesting that the satisfaction of decision makers might be guided by different principles than the satisfaction of those who receive their decisions.

DEVELOPMENT OF PROCEDURAL FAIRNESS RESEARCH

In an extensive body of research on the psychology of fairness, psychologists have investigated factors that determine people's satisfaction with conflict resolution processes. Early research on the psychology of fairness focused on *distributive* fairness. These early studies examined people's beliefs that the outcomes of their conflicts were fair, and showed that disputants' satisfaction with conflict resolution was more strongly influenced by the fairness than the favorability of the outcomes they received.² However, research on the psychology of fairness shifted to a focus on *procedural* fairness when Thibaut and Walker demonstrated that disputants' satisfaction with conflict resolution was influenced by the fairness of the conflict reso-

lution procedures, as well as the fairness of the outcomes produced by those procedures.³

Importantly, Thibaut and Walker showed that disputants judged procedures to be fair to the extent that they felt they were granted "voice" or input into the procedure, and influence over the process. Their theory of procedural fairness posited that process control was a critical determinant of disputants' judgments of procedural fairness and satisfaction. Since this research was conducted in high conflict settings (simulated legal disputes), it was assumed that disputants valued "voice" or process control because they were motivated to obtain fair outcomes, and therefore preferred procedures that permitted them to express their views and to be influential in shaping those outcomes.

Although this theory was well supported, some findings did not fit well with Thibaut and Walker's reasoning about why voice was important to disputants. Their procedural justice theory predicted that process control was important because of its potential *instrumental* value—it increased the likelihood of obtaining fair and beneficial outcomes. However, subsequent research showed that voice enhanced fairness judgments even when disputants did not think their voice would influence their outcome.⁴ This non-instrumental voice effect led two psychologists, Tom Tyler and E. Allan Lind, to propose a group value theory of procedural fairness. This theory has profoundly influenced subsequent research and theory on procedural fairness.

Tyler and Lind's research was supportive of their claim that certain non-instrumental procedural features were particularly influential for people's evaluations of these processes: trustworthy authorities, neutral procedures, and respectful treatment. If disputants felt that the authority figure in a procedure was trustworthy, the procedure was neutral, and the disputant's rights were generally respected in the procedure, then the disputants generally judged the procedure to be fair.⁵

According to the group value model of procedural fairness, this occurs because such procedural features convey to disputants that they are valued and respected members of their valued social groups. When a procedure conveys that a person is valued by their group, and that they are held in high regard

Footnotes

1. SAMUEL A. STOFFER ET AL., *THE AMERICAN SOLDIER: ADJUSTMENT DURING ARMY LIFE* § 1 (1949).
2. E.g., J. Stacey Adams, *Inequity in Social Exchange*, in 2 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 267 (Leonard Berkowitz ed., 1965); ELAINE WALSTER, et al., *New Directions in Equity Research*, in 9 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 1 (Leonard Berkowitz ed., 1976).

3. JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975).
4. E. A. Lind et al., *Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments*, 59 *J. PERSONALITY & SOC. PSYCHOL.* 952 (1990).
5. E.g., Tom R. Tyler & E. A. Lind, *A Relational Model of Authority in Groups*, in 25 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 115 (Mark P. Zanna ed., 1992).

by the authorities representing that social group, then that person will generally judge that procedure to be fair. Essentially, the group value model posits that people do not judge procedures to be fair because those procedures deliver fair or favorable outcomes, and people do not value procedural features like voice or respectful treatment because they signal the likelihood of favorable outcomes. Rather, procedural features like trust, neutrality, respect (and voice) convey important symbolic or relational information—they convey that the individual is respected by his or her group—prompting people to judge those procedures as fair.⁶ An extensive body of research provides strong support for these central claims of the group value model.

Notably, the ascendancy of the group value model in the procedural fairness literature is the culmination of a significant shift from the parameters that defined early conflict research. Psychologists have progressed from early economic models of satisfaction that focused primarily on obtaining *favorable outcomes*, to distributive fairness models that focused primarily on obtaining *fair outcomes*, to procedural fairness models that focused primarily on procedures as *instruments for shaping fair outcomes*, to a procedural fairness model that views procedures as an important source of largely *symbolic information*: information about one's relationship with valued social groups. Each of these developments has moved psychologists further away from the proposition that outcomes are critical determinants of procedural fairness judgments.

Psychologists have also demonstrated that procedural fairness judgments themselves have important social and legal consequences. For example, Tyler conducted large-scale surveys of Chicago, Illinois and Oakland, California residents.⁷ Across four studies, Tyler showed that process concerns were more important than instrumental concerns in shaping citizens' evaluations of the police and courts. Judgments about the fairness with which the police and courts exercised their authority predicted citizens' confidence in and support for legal authorities, their perceived obligation to obey the law, and their willingness to cooperate with legal authorities and legal institutions in the future—findings that have been replicated in numerous studies

since Lind and Tyler proposed their group value theory.⁸

Procedural fairness research has clearly demonstrated that disputants attach a great deal of importance to the way they are treated by the authorities who represent legal institutions.⁹ Disputants' evaluations of the legal system are heavily influenced by their perception that they were treated fairly in encounters with judges, police, and other legal authorities, and this procedural fairness effect often trumps the effect of distributive fairness and outcome favorability.¹⁰ When procedural features like trust, neutrality, respectful treatment, and voice increase procedural fairness judgments, this functions as a non-coercive means to increase compliance with the law and cooperation with legal authorities.

[F]airness and satisfaction judgments [of decision makers like judges may not be] dominated by treatment and relational concerns.

NEW FINDINGS IN PROCEDURAL FAIRNESS: DECISION MAKERS VS. DECISION RECIPIENTS

Several studies have suggested the dominant influence of procedural fairness on satisfaction may not apply equally to all actors in the legal system. Some studies suggest that, among decision makers (e.g., judges), fairness and satisfaction judgments are shaped by quite different factors and are not dominated by treatment and relational concerns. For example, Lissak and Sheppard found that managers tended to emphasize cost and efficiency more strongly than fairness as criteria for resolving organizational conflict.¹¹ Some early procedural fairness research also suggested that when assessing their satisfaction with dispute resolution procedures or outcomes, decision makers were more influenced by instrumental criteria (such as control over decisions and financial considerations), and less concerned with relational criteria (such as treatment and trustworthiness), than were decision recipients.¹²

One recent paper focused directly on judgments of procedural fairness by judges.¹³ Heuer and his colleagues point to

6. E. A. LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988).
 7. Tom 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 (2001).
 8. TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* (1997); Jason Sunshine & Tom R. Tyler, *Moral Solidarity, Identification with the Community, and the Importance of Procedural Justice: The Police as Prototypical Representatives of a Group's Moral Values*, 66 SOC. PSYCHOL. Q. 153 (2003); Tom R. Tyler et al., *Cultural Values and Authority Relations: The Psychology of Conflict Resolution Across Cultures*, 6 PSYCHOL. PUB. POL'Y & L. 1138 (2000).
 9. NAT'L CTR. FOR STATE COURTS, *HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY* (1999), available at http://www.ncsconline.org/WC/Publications/Res_AmtPTC_PublicViewCrtsPub.pdf; DAVID B. ROTTMAN, *TRUST AND CONFIDENCE IN THE CALIFORNIA COURTS: A SURVEY OF THE PUBLIC AND ATTORNEYS, PART I: FINDINGS AND RECOMMENDATIONS* (JUDICIAL COUNCIL OF CALIFORNIA/ADMINISTRATIVE OFFICE OF THE COURTS 2005), avail-

able at http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf; TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (2006).
 10. But see Linda J. Skitka, *Do the Means Always Justify the Ends, Or Do the Ends Sometimes Justify the Means? A Value Model of Justice Reasoning*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 588 (2002).
 11. Robin I. Lissak & Blair H. Sheppard, *Beyond Fairness: The Criterion Problem in Research on Dispute Intervention*, 13 J. APPLIED SOC. PSYCHOL. 45 (1983).
 12. E.g., Richard H. G. Field & Robert J. House, *A Test of the Vroom-Yetton Model Using Manager and Subordinate Reports*, 75 J. APPLIED PSYCHOL. 362 (1990); Madeline E. Heilman et al., *Reactions to Prescribed Leader Behavior as a Function of Role Perspective: The Case of the Vroom-Yetton Model*, 69 J. APPLIED PSYCHOL. 50 (1984); Pauline Houlden et al., *Preference for Modes of Dispute Resolution as a Function of Process and Decision Control*, 14 J. EXP. SOC. PSYCHOL. 13 (1978).
 13. Larry Heuer et al., *The Role of Societal Benefits and Fairness Concerns among Decision Makers and Decision Recipients*, 31 LAW & HUM. BEHAV. 573 (2007).

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several cases in which the Supreme Court was considering the propriety of police search procedures and in which the Justices appear to have relied heavily on search outcomes rather than procedural fairness. For example, the Supreme Court has considered whether the use of drug courier profiles in U.S. airports violated a passenger's Fourth Amendment rights.¹⁴

In these cases, the courts described their decision-making task as a balancing of several considerations, including the risk of false positive errors and the harms they inflict on search targets, versus the societal benefits achieved by using the profiling technique.¹⁵ In other words, the Justices describe their own decision making as a utilitarian balancing of outcome concerns: societal benefits against individual harms.

This judicial reasoning poses a challenge to the procedural fairness theorizing described above, which has emphasized the dominant influence of procedures and which has gradually moved away from characterizing procedures as instruments for obtaining fair or beneficial outcomes, to characterizing procedures as symbols—cues to social relationships and group standing.

The tension between these contrasting perspectives was the starting point for the Heuer et al.¹⁶ inquiry. If a decision maker–decision recipient disparity in concerns with procedures versus outcomes exists, it could have important ramifications: decision makers' best efforts to act fairly might leave decision recipients feeling unfairly treated, with all of the attendant negative consequences. The findings of their four studies, summarized below, suggest the presence of this disparity.

THE IMPORTANCE OF OUTCOMES AMONG JUDGES

In the first two studies, state appellate court judges (Study 1) and state trial court judges (Study 2) read a summary of a fictitious appellate case involving a search and seizure. The appellant in this case had been required to answer a series of questions before boarding a flight, and his answers were analyzed using a technology called Voice Stress Analysis (VSA). Because his responses indicated stress, federal agents searched his luggage, and the passenger was arrested when they discovered illegal materials in his possession. The summary indicated that the defendant was convicted, and was presently appealing his conviction on the grounds that the interrogation procedure violated his Fourth Amendment protection against unreasonable search and seizure. The case summary described the search procedure and the search outcome. However, the information that participants received about these two factors varied depending on their randomly assigned experimental condition.

Half of the judges read a case in which the procedure was administered in a *respectful* manner: The defendant was permitted to explain why he was triggering the VSA, and the police treated him politely. The remaining judges read a case in which the procedure was administered in a *disrespectful* manner: The defendant was not permitted to explain why he was triggering the VSA, and the police treated him rudely and with some hostility.

Similarly, half of the judges read a case summary in which the outcome of the search was of *high societal benefit*: Upon searching the passenger's luggage, the officers found a .45 caliber pistol. In addition, these judges learned that there had been 130 attempted airline hijackings in the past year, and the state's attorney pointed out that VSA was expected to cut the rate of such attempts in half. The other half of judges read a summary in which the outcome of the search was of relatively *low societal benefit*: The officers' search revealed one marijuana cigarette (Study 1) or several stolen credit cards (Study 2). These judges also learned that there had been *four* attempted airline hijacking attempts in the past year, and the state's attorney pointed out that VSA was expected to cut the rate of such attempts in half.

The judges completed a questionnaire about their reactions to this case, and their likely decisions in this appeal. They also answered questions about the way that the defendant was treated by the police, the costs and benefits of the search, the fairness of the search procedure, and the outcome of the search.

Both of these studies indicated that these judges evaluated procedures and reasoned about fairness in a different way than typically has been reported in the procedural fairness literature. Among these judges, the (high vs. low) societal benefit produced by the search influenced their decisions, and this effect was completely due to the judges' perceptions of outcome fairness. In other words, when the benefit to society was high (i.e., when a gun was found, as opposed to a joint of marijuana or stolen credit cards), judges considered the outcome of the search procedure to be more fair, and this increased the likelihood that they would uphold the appellant's conviction. In addition, neither of these studies found any evidence that the description of the search procedure—the variable typically shown to be a powerful determinant of procedural evaluations among decision recipients—influenced these judges' decisions once the outcome was known.

In short, the judges' procedural evaluations in these experimental scenarios were more heavily influenced by outcome fairness than by procedural fairness, and both their procedural fairness and outcome fairness judgments were largely determined by outcomes, rather than by procedural criteria. These findings are suggestive of a decision maker–decision recipient disparity in the criteria that shape procedural fairness and satisfaction. However, they are based exclusively on fairness reasoning among decision makers. The claim for the existence of a disparity that is a function of one's role in an encounter as

14. E.g., *U.S. v. Mendenhall*, 446 U.S. 544 (1980); *Reid v. Georgia*, 448 U.S. 438 (1980); *Florida v. Royer*, 460 U.S. 491 (1983); *U.S. v. Montoya De Hernandez*, 473 U.S. 531 (1985); *U.S. v. Sokolow*, 490 U.S. 1 (1989).

15. JOHN MONAHAN & LAURENS WALKER, *SOCIAL SCIENCE AND LAW: CASES AND MATERIALS* (3d ed. 1994).

16. Heuer et al., *supra* note 13.

either a decision maker or a decision recipient would be more convincing if decision makers and decision recipients were shown to respond differently to procedures and outcomes when confronted with a common scenario in a single experimental design. This was the goal of Studies 3 and 4 and by Heuer et al.¹⁷ In these follow-up studies, decision makers and decision recipients evaluated procedures that were: (a) more or less respectful responses to (b) more or less serious threats to a social group. These studies tested the authors' predictions that: (1) outcome concerns would have a stronger influence on the procedural evaluations of decision makers than decision recipients, and (2) procedural concerns would have a stronger influence on the procedural evaluations of decision recipients than decision makers.

Study 3 also addressed another important limitation of the studies described above. Studies 1 and 2 revealed that judges were more focused on outcome concerns than procedural ones—however, this could be due to a number of factors. For example, the judges surveyed in Studies 1 and 2 tended to be older than the undergraduate populations that typically participate in procedural fairness studies, and Finkel¹⁸ has shown that an emphasis on outcomes in fairness judgments tends to become more pronounced with age. Additionally, judges might differ from other segments of the population on certain value dimensions, such as power-distance, which refers to beliefs about the appropriate social distance between authorities and subordinates.¹⁹ In several studies, Tyler, Lind, and Huo have shown that, when evaluating procedures, people high on power-distance (who believe that there should be a greater social distance between authorities and subordinates, and that societies and organizations function better when there is a more hierarchical, clearly defined power structure) place less importance on treatment than do low power-distance people.²⁰ If judges tend to be high on power-distance relative to other sectors of the population, this, rather than their position of authority, could be the reason why they placed less value on relational concerns and more value on instrumental concerns in Studies 1 and 2.

In other words, judges' focus on instrumental concerns in Studies 1 and 2 may not be the result of a disparity between decision makers and decision recipients in fairness reasoning, but may instead be the result of a disparity between older and younger people in fairness reasoning, or a disparity between high and low power-distance people in fairness reasoning. Since Studies 1 and 2 simply surveyed judges on their reactions to the appellate case, these studies cannot rule out the possibility that judges' focus on outcome concerns is due to age or power-distance, rather than their role as decision makers.

Study 3 addresses this concern by employing an experimental design, and randomly assigning participants to take the perspective of either a decision maker or a decision recipient

in the experiment. When random assignment is employed, there is no reason to believe that the participants who are randomly assigned to these two roles are systematically different in any way, other than the role that they were assigned in the experiment. Study 3 therefore tests whether the decision maker-decision recipient disparity appears in this experimental setting, independent of the numerous characteristics that may be confounded with decision-making status in natural settings.

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DECISION MAKERS AND FAIRNESS IN AN EXPERIMENTAL STUDY

In Study 3, undergraduate participants read one of multiple versions of a vignette describing an encounter between an authority and a subordinate. In this fictional case, a student resident assistant (RA) in campus housing searched a resident's room after receiving a tip that she was violating campus-housing regulations. On discovering a violation, the RA reported the student, who was consequently banned from campus housing for one month. The vignette described the student's appeal of the sanction on the grounds that the RA's search procedure was inappropriate. The vignettes in this experiment varied on three dimensions: (a) the benefit produced by the outcome of the search, (b) the respectfulness of the RA's search procedure, and (c) whether the participant read the vignette from the perspective of an authority or a subordinate.

The outcome manipulation in this study varied whether the search resulted in an outcome of high or low benefit to the campus-housing community. In the *high-benefit* search condition the RA discovered cocaine, whereas in the *low-benefit* search condition the RA discovered burning incense (both the high- and low-benefit discoveries constituted violations of actual campus-housing regulations). The procedure manipulation varied whether the search procedure was conducted in a more or less respectful manner. In the *high-respect* condition the RA was described as treating the resident in a polite and respectful manner, whereas in the *low-respect* condition the RA was described as treating the resident in a rude and disrespectful manner.

Participants were informed that appeals were heard by a board composed of student residents, RAs, and a campus administrator. Participants imagined themselves either in the role of an authority or a subordinate in this story. Participants assigned to the *authority* perspective responded to the case while imagining themselves as an RA member of the appellate board. Participants assigned to the *subordinate* perspective were

17. *Id.*

18. Norman J. Finkel, *But It's Not Fair! Commonsense Notions of Unfairness*, 6 PSYCHOL. PUB. POL'Y & L. 898 (2000).

19. GEERT H. HOFSTEDE, CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK-RELATED ATTITUDES (1980); GEERT H.

HOFSTEDE, CULTURE'S CONSEQUENCES: COMPARING VALUES, BEHAVIORS, INSTITUTIONS, AND ORGANIZATIONS ACROSS NATIONS (2d ed. 2001).

20. Tyler et al., *Cultural Values*, *supra* note 8.

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asked to imagine the case from the perspective of either the student appellant, a student representative to the appellate board, or a student resident of campus housing who was learning the facts of the case from a report in the campus newspaper.

All participants completed a questionnaire that included questions about the search procedure, the outcome, and their preferred decision (regarding the propriety of the

search procedure) in this case. The findings of this study supported the prediction of an authority-subordinate disparity in the determinants of their reactions to this case: The search outcome had a stronger influence on the decision among participants who adopted the authority perspective, while the search procedure had a stronger influence on the decision among participants who adopted the subordinate perspective. Furthermore, procedural fairness did not have a significant influence on the decision of authorities, thus replicating this finding from Studies 1 and 2.

As noted above, Study 3 differs from the Studies 1 and 2 in its use of an experimental design, and random assignment of participants to take the perspective of either an authority or a subordinate in the experimental scenario. Since participants in this study were randomly assigned to take the role of either the authority or the subordinate, we have no reason to believe that the participants in these two roles are systematically different in any way, other than the decision maker or decision recipient role that they were assigned in the experiment. Therefore, Study 3 is important because it demonstrates that the authorities' outcome focus is not a byproduct of other factors such as age or power-distance, which were controlled for in this random assignment study. Study 3 demonstrated that simply asking people to take the perspective of a decision maker, as opposed to the perspective of a decision recipient, changed the way they thought about fairness—it reduced their concern with respectful treatment and increased their concern with outcomes.

DECISION MAKERS AND PREVENTIVE PROCEDURES

The studies described so far share an important feature: participants evaluated procedures that had already been effectively applied—that is, the search procedure always revealed that the target of the procedure had violated a law or regulation. Of course, judges, or other legal authorities, are also often called upon to judge the propriety of procedures that have been proposed, but not implemented (a recent lawsuit filed in the Federal District Court in Honolulu has requested a

restraining order prohibiting the European Center for Nuclear Research, or CERN, from proceeding with its work on the Large Hadron Collider in order to prevent a considerable *anticipated* threat: that that collider could produce a tiny black hole which could eat the Earth). With the goal of addressing the role of fairness and outcomes for anticipated procedures as well as procedures already implemented, in Study 4 authorities and subordinates evaluated a procedure that had been proposed to respond to a health threat to their workplace.

Asking participants to evaluate a proposed procedure, rather than one that has already been executed, allows one additional limitation of Studies 1-3 to be addressed: Participants in these first three studies read about a procedure directed toward someone who was known to have violated a law (Studies 1 and 2) or a community regulation (Study 3). It is possible that the authorities in these studies were less concerned with the target's treatment because their offense rendered them undeserving of respectful treatment. This deservingness view of procedural fairness has been supported in several previous studies.²¹ If Study 4 were to obtain the same authority-subordinate disparity observed in Studies 1-3, we could be more confident that this effect is not limited to settings in which someone has already committed an offense.

Participants in Study 4 were restaurant managers and restaurant employees in New York City. They were asked to read a (fictitious) newspaper story, which reported on a recent outbreak of Hepatitis A in a New York City restaurant, and which described a procedure that had been proposed by city health officials to minimize this threat. The newspaper stories that participants read varied on two dimensions: (a) the respectfulness and dignity of the proposed procedural intervention, and (b) the magnitude of the threat the procedure was intended to minimize.

Participants in the *respectful* procedure condition read that all restaurant employees would be required to sign a contract agreeing to wash their hands after a visit to the restroom. Participants in the *disrespectful* procedure condition read that a manager or designated employee would be required to observe all employees wash their hands after a visit to the restroom.

Participants in the *high-threat* condition were told that the disease was easily transmitted, that its symptoms were nausea and jaundice, and that few restaurants that experienced an outbreak would be able to survive the resulting lawsuits. Participants in the *low-threat* condition were told that transmission was as unlikely as winning the lottery, that its symptoms were a mild headache and scratchy throat, and that lawsuits were unlikely to be successful. Participants then completed a questionnaire in which they indicated whether they thought the procedure was fair and whether they approved of its use.

The results of Study 4 again supported the prediction that subordinates would be more influenced than authorities by procedural concerns: (a) perceived respectful treatment favor-

21. Larry Heuer et al., *A Deservingness Approach to Respect as a Relationally Based Fairness Judgment*, 25 PERSONALITY & SOC. PSYCHOL. BULL. 1279 (1999); 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).

ably influenced judgments of procedural fairness among restaurant employees but not among restaurant managers, and (b) perceived procedural fairness favorably influenced procedural approval among restaurant employees, but not among restaurant managers. Study 4 also supported the prediction that authorities would be more influenced than subordinates by outcome concerns: (c) perceived efficacy of the procedure at reducing the Hepatitis threat had a more favorable effect on procedural fairness among restaurant managers than among restaurant employees, and (d) perceived efficacy of the procedure had a favorable effect on procedural approval among restaurant managers but not among restaurant employees.

Therefore, despite numerous differences between Study 4 and the preceding studies (e.g., a shift from a legal context to a business context, a shift from a retrospective evaluation in which the procedure's outcomes were known to a prospective evaluation in which the procedure's outcomes are unknown, and a shift in the nature of the decision-maker and decision-recipient roles), the findings of this study are consistent with those of Studies 1-3. These results supported the hypothesis that decision makers' fairness judgments and procedural evaluations are shaped by outcome concerns, in contrast with decision recipients, whose fairness judgments and procedural evaluations are primarily influenced by treatment and relational concerns.

NEW DIRECTIONS IN PROCEDURAL FAIRNESS RESEARCH

In each of the studies described above, decision makers and decision recipients adopted different criteria when judging procedural fairness and procedural satisfaction. Decision recipients' fairness judgments were driven primarily by concerns about treatment—respectful treatment increased judgments of procedural fairness and satisfaction—but decision makers' fairness judgments were driven primarily by concerns about outcomes—effective threat reduction and beneficial outcomes increased judgments of procedural fairness and satisfaction. While these findings point to potentially important limitations regarding the generalizability of some procedural fairness effects, they also leave a fundamental question unanswered: *Why* does this disparity between decision makers and decision recipients occur? In order to understand why decision makers and decision recipients focus on different concerns when judging procedural fairness and satisfaction, we will consider the motivational assumptions of two important and influential psychological theories of fairness: the group value and relational theories. We propose that while those motivational assumptions are well suited to the situation confronting subordinates in their encounters with authorities, they might be less well suited to the situation confronting authorities.

PROTECTING THE GROUP VS. ASCERTAINING STATUS IN THE GROUP

According to the group value²² and relational²³ theories of procedural fairness, respectful, trustworthy, and unbiased procedures matter because they communicate information to people about their standing in valued social groups. These theories have been consistently supported in studies of decision recipients (who are highly motivated to be perceived as valued group members) reflecting on their encounters with decision makers (who are representatives of the group's values).

On the other hand, decision makers or authorities might be less concerned with their group standing, since it is clearly high, and instead more concerned with other issues. We suspect that group authorities (including legal, as well as political and organizational authorities) are likely to see protecting their group's welfare—a motivation that Stangor and Leary²⁴ claim is a primary human motivation—as a particularly important responsibility. If so, when they encounter tension between protecting the group and treating group members with dignity and respect, they might perceive a responsibility to attend to the pragmatic rather than the relational concerns.

In one recent study, we investigated whether authorities' relatively greater reliance on outcomes might be driven by their relatively greater concern with protecting their group's welfare. In part because we think these processes are not limited to legal settings, and because we are interested in testing these effects in diverse contexts, this study, like one of our studies described above, relied on a vignette that described a threat in an organizational context.²⁵

Participants were instructed to imagine themselves as part of a small company as they read a letter written by the CFO to the company employees. The letter described a financial threat to the company—the escalating cost of employee health insurance—and indicated that the CFO was considering changes to employees' coverage to respond to this threat. In this experiment, as in our previous ones, we systematically varied the perspective participants adopted as they read the letter. Participants who were randomly assigned to the *decision-maker* role imagined themselves as the CFO who wrote the letter, while participants who were randomly assigned to the *decision-recipient* role imagined themselves as a company employee.

The letters themselves varied on two other dimensions: (a) the magnitude of threat to the company posed by the escalating costs, and (b) whether the CFO would permit the employee-to

[D]ecision makers' fairness judgments and procedural evaluations are shaped by outcome concerns....

22. Tom R. Tyler, *The Psychology of Procedural Justice: A Test of the Group-Value Model*, 57 J. PERSONALITY & SOC. PSYCHOL. 830 (1989).

23. Tyler & Lind, *supra* note 5.

24. Charles Stangor & Scott P. Leary, *Intergroup Beliefs: Investigations from the Social Side*, in 28 ADVANCES IN EXPERIMENTAL SOCIAL

PSYCHOLOGY 243 (Mark P. Zanna ed., 2006).

25. Diane Sivasubramaniam et al., *Respect and Threat: Authority-Subordinate Disparities in Responses to Transgression*, paper presented at the annual meeting of the American Psychology-Law Society, Jacksonville, FL (March, 2008).

[O]ur questions to participants included measures of three motives that we expected might explain why authorities and subordinates differ in their fairness and satisfaction judgments....

voice their opinion and concerns about the proposed changes before deciding on a course of action (the opportunity to “voice” one’s views before a decision is made has been clearly established as an important procedural fairness concern²⁶ and has been linked to perceptions of respectful treatment²⁷).

Participants in the *high-threat* condition learned that the increased costs were sufficiently large to pose a threat to the company’s survival,

whereas participants in the *low-threat* condition learned that the increased costs were moderate and not a serious threat to the company’s survival. Participants assigned to the *high-voice* condition learned that the CFO had decided to meet with them before making his decision, whereas participants assigned to the *low-voice* condition learned that the CFO had decided not to meet with them before making his decision.

Because this study was designed to examine *why* these variables affect authorities and subordinates differently, our questions to participants included measures of three motives that we expected might explain why authorities and subordinates differ in their fairness and satisfaction judgments: protecting the company’s welfare, demonstrating a concern for the welfare of individual employees, and treating the employees with respect.

Several results of this study are noteworthy. First, the findings of this study replicated those of Heuer et al.²⁸ Among participants who adopted the perspective of the CFO, there was virtually no effect of voice on procedural fairness judgments, but voice did affect the procedural fairness judgments of participants in the role of the decision recipient, or employee. Further, perceptions of procedural fairness more strongly influenced the satisfaction of decision recipients than decision makers.

Second, our prediction that a concern with protecting the group’s welfare would be more important for decision makers than decision recipients was supported for both procedural fairness and satisfaction judgments. Thus, the findings of this study extend the findings of Heuer et al.²⁹ by pointing to authorities’ motivation to protect the group as at least one reason for their greater concern with outcomes than with procedures.

Finally, two of our predictions were not supported. We predicted that the employees’ fairness and satisfaction judgments

would be more favorably influenced than the authorities’ judgments by evidence that the authority had demonstrated a concern for the welfare of individual employees and had been respectful. In fact, concern for individuals’ welfare was more important among the decision makers, and respect was equally important for decision makers and decision recipients. While additional research is necessary before we can speak authoritatively about these effects, we offer the following speculation: We suspect that in this study, a concern for employee welfare might have mattered more to the authorities because they do not view this concern as a symbol of group standing (as it is characterized by the group value theory), but rather as a pragmatic concern for protecting the individual employee’s economic welfare (protecting their job). We think this interpretation is consistent with the general pattern of findings throughout our studies. Second, we propose that respect was equally important for fairness and satisfaction among authorities and subordinates because our analysis tested its influence while controlling for the effect of the CFO’s course of action on the company’s welfare. Essentially, we propose that once the authority’s concern for protecting the group is controlled for, there is no tension between treating employees respectfully and protecting the group’s welfare; respectful treatment—a communication that the subordinate is valued by the group—is seen as desirable by both decision makers and decision recipients.

In sum, this study replicated and extended the findings of Heuer et al.,³⁰ demonstrating that voice is less important for the fairness judgments of authorities, and fairness is less important for the satisfaction of authorities. But the findings of this study also supported the prediction that authorities are more concerned with instrumental motives related to protecting the group and its members. It therefore appears that authorities are focused on using procedures that they feel will protect the group, rather than trying to communicate a relational message to the group’s members. However, the relational message is not unimportant to authorities—in essence, when concerns about protecting the group are taken into account, there was no difference between authorities and subordinates in the importance they placed on respectful treatment. As long as the decision makers felt that they were protecting the decision recipients’ and the group’s welfare, they were as concerned as decision recipients were about decision recipients being treated respectfully.

The findings of this study indicate that increased concern with group protection is one feature that differentiates decision makers and decision recipients, and more strongly influences the fairness and satisfaction judgments of decision makers. This finding is important because it begins to illuminate *why* decision makers and decision recipients reason differently

26. THIBAUT & WALKER, *supra* note 3; Gerald S. Leventhal, *What Should Be Done with Equity Theory? New Approaches to the Study of Fairness in Social Relationships*, in *SOCIAL EXCHANGE: ADVANCES IN THEORY AND RESEARCH* 27 (Kenneth J. Gergen, et al. eds., 1980); John Thibaut & Laurens Walker, *A Theory of Procedure*, 66 CALIF. L. REV. 541(1978).

27. LIND & TYLER, *supra* note 6; Tyler, *supra* note 22.

28. Heuer et al., *supra* note 13.

29. *Id.*

30. *Id.*

31. *Id.*

about fairness, as they did in the Heuer et al.³¹ studies.

While this study has initiated an investigation of the motivational underpinnings of an authority-subordinate disparity in the role of outcomes and procedures for procedural fairness and satisfaction, additional research on this topic is needed. Numerous other candidates exist as causal mechanisms that may help to account for the increased emphasis that decision makers place on instrumental concerns, relative to decision recipients. We briefly consider two potential candidates here.

DIFFERENCES BETWEEN DECISION MAKERS AND DECISION RECIPIENTS

Who Is Targeted by Procedures and Outcomes?

While we have focused on a distinction between authorities and subordinates, we have so far neglected to consider the ways in which this distinction is, in most natural settings, confounded with several other distinctions—each of which are candidates for explaining the phenomenon of different degrees of concern with outcomes versus procedures. For example, in the studies summarized above, as in much of the procedural fairness literature, the decision maker is typically the source, rather than the target of the procedures under consideration. So when, in the restaurant study described above, both managers and employees evaluated a procedure targeted at the employee, the employee, not the manager, was the one who was to be observed in the restroom. Thus, restaurant managers evaluated a procedure targeted at *someone else*, but employees evaluated a procedure targeted at them. It is possible that people will place a greater emphasis on respect when considering their own treatment, rather than the treatment of someone else. This possibility requires further investigation, so that we can establish whether decision makers' reduced concern with respect may result from the fact that decision recipients are the targets of the treatment or procedures being evaluated, whereas decision makers are not. The studies described above do not tease apart the potentially independent contributions of the authority-subordinate distinction from the source-target distinction.

In addition, decision recipients are also generally more likely than decision makers to be affected by the *outcome* that results from the procedure. In one study that examined people's reactions to a smoking ban, smokers were more sensitive than non-smokers to the procedures that were used to implement that new policy.³² The same distinction might matter as judges interact with litigants—by virtue of the fact that most of the procedures employed by the court will produce outcomes of considerably greater consequence to the litigants than the judges, the litigants might be more sensitive to procedural subtleties. For the purposes of gaining a better understanding of the disparate reactions to procedures and outcomes we have described above, this distinction should also be investigated independently of the authority-subordinate distinction and the source-target distinction.

The Macroscopic Perspective

So far, we have emphasized the extent to which most of the procedural fairness research has focused on the subordinates in their encounters with authorities. Recently, other researchers have pointed to another potentially important variable that has received relatively little attention, and that might also play a role in producing some of the effects we have obtained

in our own studies. Most of the existing fairness research asks participants to evaluate procedures directed at individuals (e.g., encounters between a judge and a litigant, or between a police officer and a civilian, or a manager and an employee). Recently, some studies have begun to investigate fairness reasoning in settings in which procedures are directed at groups of people. Tyler and colleagues³³ point out that some procedures can involve a macroscopic perspective, and Leung, Tong, and Lind³⁴ investigated whether respectful treatment, so well-established as a critical fairness concern when procedures are directed at individuals, holds for policy and social decisions that are primarily concerned with collective rather than with individual outcomes. In a series of surveys that asked participants about large-scale social issues (asylum seekers, an economic intervention, and accountability of principal government officials), Leung et al., showed that, contrary to findings usually seen with individual-level decisions in procedural fairness studies, collective outcome favorability was more important than procedural fairness in influencing participants' endorsements of policy decisions.³⁵

In natural settings, decision makers, such as judges, administer dispute resolution procedures regularly, and may thus be exposed to the wider implications of a procedure's outcome for many individuals, across many different scenarios, often across long periods of time. It therefore appears that, in naturalistic settings, group-level and societal-level concerns may be more salient for decision makers, rather than decision recipients. It is therefore plausible that decision makers and decision recipients differ in their focus, with decision makers taking this macroscopic perspective, while individual concerns are more salient for decision recipients. As noted above, decision recipients, typically of lower or less secure status than decision makers, are highly motivated to seek out information about their status in social groups when interacting with authorities. According to the group value³⁶ and relational³⁷ models of procedural fairness, treatment is central to fairness reasoning because it conveys this important relational information. In

It is possible that people will place a greater emphasis on respect when considering their own treatment, rather than the treatment of someone else.

32. Jerald Greenberg, *Using Socially Fair Treatment to Promote Acceptance of a Work Site Smoking Ban*, 79 J. APPLIED SOC. PSYCHOL. 288 (1994).

33. TYLER ET AL., SOCIAL JUSTICE, *supra* note 8.

34. Kwok Leung et al., *Realpolitik Versus Fair Process: Moderating*

Effects of Group Identification on Acceptance of Political Decisions, 92 J. PERSONALITY & SOC. PSYCHOL. 476 (2007).

35. *Id.*

36. Tyler, *supra* note 22.

37. Tyler & Lind, *supra* note 5.

addition, Fairness Heuristic Theory³⁸ posits that fair treatment is an indication that the authority is trustworthy and that complying with their direction will not lead to exploitation. These concerns about group status and exploitation may be ones that are not shared by authorities or decision makers, and above, we provide evidence that authorities are more focused on group protection than are decision recipients when evaluating procedures.³⁹

In addition to affecting the information that people are motivated to seek out, decision-making status may also change the way that information about a scenario is processed. Smith and Trope conducted an experiment in which they primed participants for either high or low power, and found that those primed for high power engaged in more abstract, less detailed processing of stimuli than did those primed for low power, and did so even when this resulted in worse performance on a task.⁴⁰ Their findings indicate that high power leads people to view stimuli in a different way, focusing on gist and “big picture” trends rather than details, and categorizing events broadly. If those with legal decision authority are more focused on group-level and societal-level concerns than are decision recipients, this may influence the way that they process information, as well as the information that they attend to, when evaluating a legal procedure. In line with the findings of Leung et al.,⁴¹ this group-level focus may result in an emphasis on collective outcome favorability when evaluating procedures.

CONCLUSIONS AND IMPLICATIONS

Thus far, the research suggests that decision makers are less affected by procedural concerns than are decision recipients. In three of four studies conducted by Heuer et al.,⁴² there was no effect of respectful or dignified treatment on the procedural fairness judgments of the authorities—this effect was observed only among the subordinates. Recently, we have begun to investigate why this might be the case, and findings indicate that decision makers’ fairness judgments are shaped by concern for group protection to a greater extent than are those of decision recipients. However, there are a number of other factors that might lead to the discrepancy between decision makers and decision recipients, and further research is required to identify the priorities that occupy the focus of decision makers, and lead them to emphasize instrumental concerns in their

fairness judgments, when decision recipients are clearly focused on treatment.

An important point to note in this work is its demonstration that the applicability of procedural fairness research is more nuanced than has previously been acknowledged. While a number of procedural fairness theorists have argued that the meaning of fairness changes across situations,⁴³ and others have suggested that outcome concerns and relational concerns can be differentially important in different contexts,⁴⁴ none of these perspectives have explored the contrast between decision makers and decision recipients. The recognition that decision makers’ fairness judgments operate differently to those of decision recipients opens new avenues for inquiry in the procedural fairness literature, and calls for better understanding of the psychological underpinnings of fairness reasoning among decision makers, including judges.



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38. E. Allan Lind, *Procedural Justice and Culture: Evidence for Ubiquitous Process Concerns*, 15 ZEITSCHRIFT FÜR RECHTSZOLOGIE 24 (1994).

39. Sivasubramaniam et al., *supra* note 25.

40. Pamela K. Smith & Yaacov Trope, *You Focus on the Forest When You're in Charge of the Trees: Power Priming and Abstract Information Processing*, 90 J. PERSONALITY & SOC. PSYCHOL. 578 (2006).

41. Leung et al., *supra* note 34.

42. Heuer et al., *supra* note 13.

43. E.g., Francis J. Flynn & Joel Brockner, *It's Different to Give Than to Receive: Predictors of Givers' and Receivers' Reactions to Favor Exchange*, 88 J. APPLIED PSYCHOL. 1034 (2003); Gerald S. Leventhal et al., *Beyond Fairness: A Theory of Allocation Preferences*, in JUSTICE AND SOCIAL INTERACTION 167 (Gerold Mikula

ed., 1980); Robin I. Lissak & Blair H. Sheppard, *Beyond Fairness: The Criterion Problem in Research on Dispute Intervention*, 13 J. APPLIED SOC. PSYCHOL. 45 (1983); Blair H. Sheppard et al., *Procedural Justice from the Third-Party Perspective*, 54 J. PERSONALITY & SOC. PSYCHOL. 629 (1988); Tomas Ståhl et al., *On the Psychology of Procedural Justice: Reactions to Procedures of Ingroup vs. Outgroup Authorities*, 34 EUROPEAN J. SOC. PSYCHOL. 173 (2004).

44. E.g., Kees van den Bos et al., *Procedural and Distributive Justice: What Is Fair Depends More on What Comes First Than on What Comes Next*, 72 J. PERSONALITY & SOC. PSYCHOL. 95 (1997); Skitka, *supra* note 10; Linda J. Skitka & David A. Houston, *When Due Process Is of No Consequence: Moral Mandates and Presumed Defendant Guilt or Innocence*, 14 SOC. JUST. RES. 305 (2001).