

# The Origins and Consequences of Procedural Fairness

E. ALLAN LIND & TOM R. TYLER, *The Social Psychology of Procedural Justice*.  
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In 1975 John Thibaut and Laurens Walker published their seminal monograph, *Procedural Justice: A Psychological Analysis*.<sup>1</sup> It involved a comparative empirical analysis of third-party procedures used in conflict resolution, such as adjudication, arbitration, and mediation. The research was concerned with a number of aspects of procedures, including fact-finding efficacy, but some of the most interesting findings involved subjective reactions to procedures: disputants (and uninvolved parties) were often as concerned with the fairness of the processes as with the outcome itself. This insight spawned substantial additional research on procedural fairness, in part because it is theoretically interesting but also because it would appear to have significant consequences for the design and implementation of mechanisms of dispute resolution. If disputants do not see procedures as fair, they will not accord them legitimacy, will avoid them if possible, and if forced to use them, will not readily accept the outcomes. Such matters are a major concern in debate about alternative dispute resolution in the legal system and in other settings as well.<sup>2</sup>

In *The Social Psychology of Procedural Justice*, Allan Lind and Tom

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1. John Thibaut & Laurens Walker, *Procedural Justice: A Psychological Analysis* (Hillsdale, N.J.: Lawrence Erlbaum Associates, 1975) ("Thibaut & Walker, *Procedural Justice*").

2. See, e.g., Carrie Menkel-Meadow, "Toward Another View of Legal Negotiation: The Structure of Problem Solving," 31 *UCLA L. Rev.* 754 (1984); Sally Merry & Susan Silbey, "What Do Plaintiffs Want? Reexamining the Concept of Dispute," 9 *Just. Sys. J.* 151 (1984).

Tyler, currently the two leading researchers in the field, have collaborated to review and integrate the substantial body of literature that has accumulated in the decade and a half since Thibaut and Walker's monograph. Their effort advances our theoretical understanding of subjective reactions to procedure, and it documents the importance of procedural fairness in conflict resolution, in assessments of political legitimacy, and in organization behavior.

To provide a base for readers who are unfamiliar with the work of Thibaut and Walker I will briefly outline their conceptual approach and conclusions. I will then selectively discuss some of the material that Lind and Tyler reviewed in their integrative effort. Accompanying this discussion, I offer a critique and suggestions for issues to be addressed in future research.

### THE INITIAL RESEARCH: A PSYCHOLOGICAL ANALYSIS OF PROCEDURE

John Thibaut, a social psychologist, and Laurens Walker, a law professor, became interested in the empirical study of the impact of procedures as distinct from outcomes—that is, “procedural” as opposed to “distributive” justice. The intellectual origins of the collaboration were, of course, the lawyer's concern with procedure and the social psychologist's concern with social processes. Third-party resolution forums, in the view of their analytical scheme, operated in two stages: an evidence, or “process,” phase and a “decision” phase. Procedures could be compared according to how the structure of the procedure allocated power between the disputing parties and the third party during the two stages. Thus, in common law adjudication the disputing parties control the process stage (with the judge being passive except to make rulings on specific procedural issues), but the judge (and jury) retain responsibility for deciding the outcome. By contrast, inquisitorial legal systems, such as those common in continental Europe,<sup>3</sup> place considerable power in the hands of the judge to both develop the evidence and decide the outcome.

Similarly, mediation may be seen as a procedure whereby the disputing parties maintain control over both the process and decision stages because no resolution can come about without their mutual consent; arbitration, on the other hand, allows the parties to control the process stage but vests decision-making power in the hands of the arbitrator. Thibaut and Walker also distinguished between “objective” and “subjective” procedural justice, the former being the assessment of procedure according

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3. For a comparison of adversarial and inquisitorial systems, see Miriam Damaska, “Structures of Authority and Comparative Criminal Procedure,” 84 *Yale L. J.* 483 (1975).

to some normative standard and the latter being the assessment according to its perceived fairness. These two ways of evaluating procedure are theoretically independent of one another: a procedure that is objectively fair may be perceived as unfair, and one that is objectively unfair may be perceived as fair. Thibaut and Walker's approach to procedure is inherently a psychological one: human acts are seen as the vehicles through which procedures are carried out, and the evaluation of the dimensions of subjective justice involves the attitudes and perceptions of people who are exposed to the procedures.

In a series of studies, mostly laboratory simulations, Thibaut and Walker explored three general questions: Under what conditions will disputants turn to a third party for aid in resolving their conflict? When resolution forums involve binding decisions by a third party, such as in arbitration or adjudication, how do adversary and inquisitorial systems compare? What are the psychological and cultural factors underlying procedural evaluations? While these authors were concerned with both the objective and subjective dimensions of procedural justice in their attempt to build a broad theory of procedure,<sup>4</sup> I will only summarize their main findings and insights bearing on subjective justice, since it is to this topic that Lind and Tyler's book is addressed.

With respect to the first question, research indicated that when conflict was intense, disputants seemed to recognize the need for a third party to decide the outcome. On the other hand, disputants expressed a strong desire to retain control over the process stage. Because this preference for low third-party process control but high third-party decision control reflects the adversary system of procedure predominant in American law, it was initially hypothesized that the findings were culturally bound; if the participants in the studies had come from countries whose legal systems were based on an inquisitorial form of legal procedure, their socialization in that system would lead them to favor models of dispute resolution that give the third party high process-stage as well as decision-stage control. However, replication experiments in France and West Germany found that people from those cultures also favored high disputant control over the process stage. In short, the preference was not confined to persons raised in cultures with an adversary legal system. The data also indicated that the central factor in people's preference was their perception that high disputant control over process was "fairer."

In addition, judgments that the procedure was fair were significantly associated with disputant satisfaction with outcomes, even when the outcomes were adverse to the disputants' personal interests. In one experi-

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4. Subsequent work by Thibaut and Walker extended their theory to other decision-making domains. See John Thibaut & Laurens Walker, "A Theory of Procedure," 66 *Calif. L. Rev.* 541 (1978).

ment, for example, the subjects played the role of a disputant accused of a rule violation and then were randomly assigned to one of two procedural forums—an adversary or an inquisitorial procedure—with a result that the person was either found innocent or guilty. As expected, those persons who received a favorable verdict were more satisfied with the outcome than those who were found guilty. The more interesting finding, however, was that the adversary procedure resulted in greater feelings of procedural fairness and satisfaction with the verdict. Moreover, when the verdict was unfavorable, disputants in the adversary condition rated the procedure as more fair than disputants in the inquisitorial hearing condition. Thus, the data suggested that perceived fairness was an independent contributor to disputant acceptance of outcomes.

These ground-breaking research studies, by teasing apart some important structural dimensions of procedure, indicated that process control contributed significantly to perceptions of procedural fairness. In turn, the perception of procedural fairness was positively related to satisfaction with outcomes. However, a host of questions were left unanswered. Most of the research was based on simulations and concentrated primarily on legal and quasi-legal dispute settings, raising concerns about generalizability of the findings.<sup>5</sup> Equally important, the studies left undeveloped the theoretical causes and consequences of the procedural justice effects. The research reviewed by Lind and Tyler pursues those issues.

## PROCEDURAL JUSTICE IN LEGAL AND QUASI-LEGAL SETTINGS

After reviewing Thibaut and Walker's work and discussing research strategies,<sup>6</sup> Lind and Tyler explore the implications of judgments about procedural fairness and the factors that give rise to it in conflict resolution forums. While the experiments from which Thibaut and Walker drew their conclusions were largely confined to college student populations, the subsequent studies include surveys of defendants in traffic and misdemeanor courts, citizens who have had encounters with the police, con-

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5. Miriam Damaska, "Presentation of Evidence and Factfinding Precision," 123 *U. P. L. Rev.* 1083 (1975); Robert M. Hayden & Jill K. Anderson, "On the Evaluation of Procedural Systems in Laboratory Experiments: A Critique of Thibaut and Walker," 3 *Law & Hum. Behav.* 21 (1979); Jill K. Anderson & Robert M. Hayden, "Questions of Validity and Drawing Conclusions from Simulation Studies in Procedural Justice: A Comment," 15 *Law & Soc'y Rev.* 293 (1981).

6. The Thibaut and Walker research program is discussed thoroughly in chapter 2. Chapter 3 is devoted to research methods and the philosophy of science as it pertains to procedural justice studies. Chapter 3 was undoubtedly prompted by the criticisms of the laboratory simulation method that Thibaut and Walker used to explore their hypotheses. For readers trained in the social sciences this chapter is unnecessary, but for others it provides a useful background.

victed felons, prisoners in a military stockade, and litigants whose disputes have been processed in court-annexed arbitration programs. Across settings and populations, perceptions of procedural fairness seem to be significant factors in the evaluation of dispute resolution forums and their outcomes, sometimes in less than obvious ways. Contrary to the criticism that the procedural justice phenomena might be limited to laboratory simulations, the effects appear to be pervasive in real life settings. Substantive outcomes are important, of course, but so is the perceived fairness of the procedure by which the dispute is resolved. Moreover, the earlier finding that procedural fairness is particularly important when the outcome is negative seems corroborated.

One of Tyler's studies (at 70), for example, involved interviews with Chicago residents who had had encounters with the police and the courts. They were asked about their satisfaction with their treatment and the outcome. Perceptions of the fairness of treatment were the strongest determinants of outcome satisfaction. The respondents were disaggregated into groups of persons who had received favorable or unfavorable outcomes and then further disaggregated according to whether they felt that the outcome had resulted from a fair or an unfair procedure. Even when the outcome was unfavorable, those who perceived the procedure as fair remained positive about the authorities who had made the decision. Similarly, when Adler, Hensler, and Nelson (at 72)<sup>7</sup> studied litigants who had won or lost their case in a court-annexed arbitration program, losers who rated the hearing as fair were relatively more satisfied with the outcome than losers who saw it as unfair. By contrast, judgments of procedural fairness were unrelated to satisfaction among those persons who won their case.

Additional studies indicate that these basic findings may hold even when the legal consequences are major. Convicted felony defendants facing prison sentences were asked to evaluate their experience (at 73).<sup>8</sup> Severity of sentence did not have a direct effect on evaluations, but evaluations were positively related to whether the defendant perceived the case as having been handled in a fair way.

Does perceived fairness have any behavioral consequences? One can hypothesize that if litigants or others coming into contact with the legal system perceive the process as fair, they will accord the system "legitimacy" and in turn will accept or comply with the decision. Of course, many other factors affect behavior, complicating the prediction. Although Lind and Tyler find some indirect support for the hypothesis, the data are weak

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7. J. W. Adler, D. R. Hensler, & C. E. Nelson, *Simple Justice: How Litigants Fare in the Pittsburgh Court Arbitration Program* (Santa Monica, Cal.: Rand Corporation, 1987).

8. Jonathan D. Casper, Tom R. Tyler, & B. Fisher, "Procedural Justice in Felony Cases," 22 *Law & Soc'y Rev.* 483 (1988); J. M. Landis & L. Goodstein, "When Is Justice Fair?" 1986 *A.B.F. Res. J.* 675.

and susceptible to alternative interpretations. I am inclined to conclude that the effects of procedural justice on compliance in legal settings remain to be demonstrated. Nevertheless, Lind and Tyler's hypothesis that "the use of fair procedures does indeed provide a cushion for authorities when the outcomes they have provided are unfavorable" (at 71) seems reasonable and deserves additional research attention.

Our knowledge about procedural justice effects is incomplete unless we ask what causes a procedure to be seen as fair. Recall that Thibaut and Walker found that disputants preferred procedures that gave process control to the disputants and that perceived procedural fairness was the primary determinant of the preference. Subsequent research has elaborated substantially on these findings.

A study by Sheppard (at 86)<sup>9</sup> suggests that Thibaut and Walker's two-component model, involving a process stage and a decision stage, can be elaborated. Sheppard described a hybrid procedure that allows disputants freedom to present their evidence and arguments but allows the arbiter to ask questions and seek clarification of facts during the process stage of dispute resolution. In an experiment, he compared reactions to the hybrid procedure with reactions to adversary and inquisitorial modes of procedure. While disputants preferred the adversary procedure over the inquisitorial procedure, replicating the findings of earlier studies, they preferred the hybrid procedure over either and saw it as more fair as well. People may feel that a third party who is allowed to be active in the process stage can ameliorate any imbalances of power between the parties and be a more informed, rational decision maker. Future research might test this hypothesis in different settings. For example, disputants may evaluate arbitration hearings positively in comparison with adjudication because the arbitrator, in contrast with the judge (and jury), often does engage in behaviors similar to those posed by Sheppard's hybrid model. Another testing ground might be in courts that experiment with allowing jurors to ask questions.<sup>10</sup> The normative concern in these jury trial experiments has been whether asking questions or seeking clarification might improve the accuracy of decision making. However, another consequence may be that litigants as well as jurors will evaluate the jury trial process (and outcomes?) as fairer.

Several hypotheses have been generated as to why disputants and potential disputants place such a high value on process control. Thibaut and Walker speculated that disputants and outside observers believe that it ul-

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9. Blair H. Sheppard, "Justice Is No Simple Matter: A Case for Elaborating Our Model of Procedural Fairness," 49 *J. Personality & Soc. Psychology* 953 (1985).

10. Larry Heuer & Steven Penrod, "Increasing Juror's Participation in Trials: A Field Experiment with Jury Notetaking and Question Asking," 12 *Law & Hum. Behav.* 231 (1988); L. B. Sand & S. A. Reiss, "A Report on Seven Experiments Conducted by District Court Judges in the Second Circuit," 60 *N.Y.U. L. Rev.* 423 (1985).

timately promotes better distributive justice.<sup>11</sup> A related hypothesis was proposed by Brett, who compared arbitral and mediational procedures.<sup>12</sup> She hypothesized that process control is a substitute for decision control in arbitral forums, thereby giving disputants the perception that they have some control over outcomes. In contrast with both of these “instrumental” hypotheses, which place emphasis on the disputants’ self-interest in obtaining a favorable outcome, Tyler, Rasinski, and Spodich<sup>13</sup> proposed that process control is important because it allows disputants to have their story heard. This “value-expressive” hypothesis suggests that an important function of dispute resolution is symbolic; giving voice to a third party about the grievance underlying the dispute is an end in itself.

Lind and Tyler view these hypotheses as competing. After reviewing the research bearing on them, they conclude that the findings are mixed. Some appear to support instrumental self-interest as a motive in seeking process control; others support the expression of values as the motive. Unlike Lind and Tyler I see no necessary inconsistencies here. I view the hypotheses as complementary rather than competing and incorporate both within an instrumental perspective. Sometimes giving voice, telling one’s story, is more important than any material outcome that may emerge from the resolution forum. Giving voice is a symbolic statement of rightness or wrongness that is addressed to social relationships.<sup>14</sup> Sometimes a symbolic issue may be the sole factor that gives rise to conflict and helps to maintain it. At other times a symbolic issue is entwined with conflict over material outcomes. In any event, the expression of values about the roles of the players who gave rise to the conflict serves the instrumental function of helping the disputant psychologically adjust perceptions of the social world.<sup>15</sup>

Still maintaining an instrumental perspective, we might want to fur-

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11. Thibaut & Walker, 66 *Calif. L. Rev.* at 541 (cited in note 4).

12. Jean M. Brett, “Commentary on Procedural Justice Papers,” in Roy Lewicki, Max Bazerman, & Blair Sheppard, eds., 1 *Research on Negotiations in Organizations* (Greenwich, Conn.: JAI Press, 1986).

13. Tom R. Tyler, K. Rasinski, & N. Spodick, “The Influence of Voice on Satisfaction with Leaders: Exploring the Meaning of Process Control,” 48 *J. Personality & Soc. Psychology* 72 (1985).

14. See Neil Vidmar & Dale T. Miller, “Social Psychological Processes Underlying Attitudes Toward Legal Punishment,” 14 *Law & Soc’y Rev.* 565 (1980); Murray Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press, 1964); Joseph R. Gusfield, *Symbolic Crusade: Status Politics and the American Temperance Movement* (Urbana: University of Illinois Press, 1963); Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* (New York: Wiley, 1966).

15. Vidmar & Miller, 14 *Law & Soc’y Rev.* at 565; Daniel Katz, “The Functional Approach to the Study of Attitudes,” 24 *Pub. Opinion Q.* 163 (1960); Edward E. Jones & John W. Thibaut, “Interaction Goals as Bases of Inference in Interpersonal Perception,” in Renato Tagiuri & Luigi Petrullo, eds., *Person Perception and Interpersonal Behavior* (Stanford, Cal.: Stanford University Press, 1958); Melvin J. Lerner, “The Justice Motive: Some Hypotheses As To Its Origins and Forms,” 45 *J. Personality* 1 (1977).

ther subdivide the motives.<sup>16</sup> Within the category of material ends we might include restitution, compensation, and cessation of certain behaviors. Among value-expressive motives we might include retribution, equity, parity, and need. I do not suggest that this categorizing scheme is complete or that the motives are empirically independent. I do want to make the general point that the motives that give rise to and maintain conflict differ across disputes and disputants. The relative weights given to the motives are affected by the material needs and desires of disputants, the history of the dispute, the cultural context, and the personalities of the disputants. This heterogeneity in motives probably accounts for at least some of the conflicting findings in the literature that Lind and Tyler surveyed.

In considering the studies Lind and Tyler reviewed, I was struck by how little attention has been given to disputes and dispute motives. It is as if the preoccupation with the structure of procedures has caused researchers to overlook the conflicts that procedures are intended to resolve. Ironically, the initial conceptualizations by Thibaut and Walker gave attention to the underlying conflict. The concept of correspondence and noncorrespondence of interests between disputing parties was central in explaining both behaviors and perceptions.<sup>17</sup> An early study in their research program varied the nature of the dispute as a factor in choice of procedures.<sup>18</sup> In a simulation of a conflict, some prospective litigants had a claim based on equity considerations—that is, on a norm of “fairness”—whereas others had a claim based on a strict legal interpretation of the dispute. Those persons with an equity claim preferred low third-party control over the presentation of evidence, especially when the procedure

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16. For references relating to the discussion in this paragraph, see Vidmar & Miller, 14 *Law & Soc’y Rev.* at 565; Neil Vidmar, “Justice Motives and Other Psychological Factors in the Development and Resolution of Disputes,” in Melvin Lerner & Sally Lerner, eds. *The Justice Motive in Social Behavior* (New York: Plenum Press, 1981) (“Lerner & Lerner, *The Justice Motive*”); Arthur Leff, “Injury, Ignorance and Spite—The Dynamics of Coercive Collection,” 80 *Yale L. J.* 1 (1970); Robert Hogan & Nicholas Emler, “Retributive Justice,” in Lerner & Lerner, *The Justice Motive*; Vilhelm Aubert, “Competition and Dissensus: Two Types of Conflict and of Conflict Resolution,” 7 *J. Conflict Resolution* 26 (1963); *id.*, “Courts and Conflict Resolution,” 11 *J. Conflict Resolution* 40 (1976); William L. F. Felstiner, Richard L. Abel, & Austin Sarat, “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .,” 15 *Law & Soc’y Rev.* 631 (1981); Keith O. Boyum, “The Etiology of Claims: Sketches for a Theoretical Mapping of the Claim-Definition Process,” in Keith O. Boyum & Lynn Mather, eds., *Empirical Theories About Courts* (New York: Longman, 1983); Patricia W. Crowe, “Complaint Reactions to the Massachusetts Commission Against Discrimination,” 12 *Law & Soc’y Rev.* 217 (1978); James E. Westbrook, “The Problems with Process Bias,” 1989 *J. Dispute Resolution* 311; and Neil Vidmar & Regina A. Schuller, “Individual Difference and the Pursuit of Legal Rights: A Preliminary Inquiry,” 11 *Law & Hum. Behav.* 299 (1987).

17. See Thibaut & Walker, *Procedural Justice* ch. 2, 3, and 6–21 (cited in note 1).

18. Pauline Houlden, Stephen Latour, Laurens Walker, & John Thibaut, “Preferences for Modes of Dispute Resolution as a Function of Process and Decision Control,” 14 *J. Experimental Soc. Psychology* 13 (1978).



vested the third party with high decision control. The significance of the result, of course, is not only that the underlying nature of the dispute affected choice of procedure but also presumably influenced perceived fairness, although no measures bearing on perceptions were reported, and presumably, none were assessed in the study. However, the implications of the finding have not been followed up in subsequent research. The study is cited once in Lind and Tyler's otherwise comprehensive review (at 35), but with respect to some other results from the experiment; no mention is made about the data on influence of dispute type.

Lind and Tyler are cognizant of dispute motives. For example, they discuss correspondence of interest with respect to Thibaut and Walker's original work (at ch. 2, 7-40). In other places they acknowledge such factors as well (at 88, 110, 136, 138, 180, for example). They also discuss important research by Leung and Lind (at 88)<sup>19</sup> that found that people socialized in American Chinese and Hong Kong Chinese cultures preferred mediation over adjudication because they were averse to the public conflict that adversary procedures were perceived to promote. However, the impact of these variables does not seem adequately integrated into the hypotheses that Lind and Tyler set forth about procedural justice phenomena, particularly regarding interactions with different forms of process.

That disputants have varying power relationships, interests, and goals that interact with procedures has long been recognized in legal commentary. Lon Fuller, for example, noted such variations in his essays on the forms and functions of mediation and adjudication.<sup>20</sup> Dispute and disputant factors have also been observed in a growing body of literature in legal anthropology that explores divergences between what resolution procedures provide and what disputants want.<sup>21</sup> Similarly, social psychological research has given attention to these issues. Research by Schuller<sup>22</sup> and by Heuer and Penrod<sup>23</sup> indicates that different types of disputes give rise to different needs and preferences for procedure. Indeed, Heuer and Penrod specifically took cognizance of the inattention to conflicts in procedural

19. See K. Leung & Allan E. Lind, "Procedural Justice and Culture: Effects of Culture, Gender, and Investigator Status in Procedural Preferences," 50 *J. Personality & Soc. Psychology* 1134 (1986).

20. Lon Fuller, "The Forms and Limits of Adjudication," 92 *Harv. L. Rev.* 353 (1978); *id.*, "Mediation—Its Forms and Functions," 44 *S. Cal. L. Rev.* 305 (1971).

21. See William M. O'Barr & John M. Conley, "Lay Expectations of the Civil Justice System," 22 *Law & Soc'y Rev.* 137 (1988); Merry & Silbey, 9 *Just. Sys. J.* at 151; see generally Laura Nader & Harry F. Todd, Jr., eds., *The Disputing Process: Law in Ten Societies* (New York: Columbia University Press, 1978); P. H. Gulliver, *Disputes and Negotiations* (New York: Academic Press, 1979); Sally E. Merry, "Disputing Without Culture," 100 *Harv. L. Rev.* 2057 (1987).

22. Regina A. Schuller, "Preferences for Adjudication, Arbitration, and Mediation: An Empirical Investigation (M.A. thesis, University of Western Ontario, 1985).

23. Larry B. Heuer & Steven Penrod, "Procedural Preferences as a Function of Conflict Intensity," 51 *J. Personality & Soc. Psychology* 700 (1986). This article is in fact discussed briefly by Lind and Tyler (at 88).

justice research. Kressel and Pruitt have reviewed the implications of level of conflict, motivation for agreement, availability of resources, presence of matters of principle, power relationships, and degree of intraparty conflict in the acceptability of mediation.<sup>24</sup> Peachey has observed that receptivity to mediation is often a function of the justice motives of disputants and has suggested that when retributive justice rather than equity is central to the conflict, mediation is not an appealing procedural format.<sup>25</sup> Exploring negotiations in civil law disputes, van Koppen emphasized the importance of retributive justice over equity and suggested how a divergence between formal legal norms and personal norms affects disputant preferences for negotiation.<sup>26</sup> Studies of Japanese legal culture suggest that conceptions of social rights and obligations, which are sometimes in stark contrast to American notions of individual rights, may affect judgments of procedural fairness.<sup>27</sup> I could continue with other examples, but my purpose here is only to point out a problem of conceptual analysis, not to develop a working theory.

To return to the issue that started my digression on the relative inattention to disputes and motives in the procedural justice literature, I would hypothesize that a disputant driven by a need for retribution will likely have a greater need for voice than one driven primarily by strict pecuniary interests; one driven by equity considerations will have different preferences for procedures and judge them differently than one driven by an appeal to strict legal rights. This example, as well as examples in the other literature noted above, points to the need for a conceptual model that recognizes dispute characteristics and integrates them with procedural structures.

## PROCEDURAL JUSTICE IN OTHER SETTINGS

Lind and Tyler's book contains several chapters devoted to procedural justice in social, political, and organizational settings. In my view this is the most interesting part of the book. The evidence indicates that

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24. Kenneth Kressel & Dean G. Pruitt, "Conclusion: A Research Perspective on the Mediation of Social Conflict," in Kenneth Kressel & Dean G. Pruitt, eds., *Mediation Research* (San Francisco: Jossey-Bass, 1989) ("Kressel & Pruitt, *Mediation Research*").

25. Dean E. Peachey, "What People Want from Mediation," in Kressel & Pruitt, *Mediation Research*.

26. Peter J. van Koppen, "Justice and Power in Civil Law Negotiations," 2 *Soc. Just. Res.* 137 (1988).

27. See Joel Rosch, "Institutionalizing Mediation: The Evolution of the Civil Liberties Bureau in Japan," 21 *Law & Soc'y Rev.* 244 (1987); Setsuo Miyazawa, "Taking Kawashima Seriously: A Review of Japanese Research on Japanese Legal Consciousness and Disputing Behavior," 21 *Law & Soc'y Rev.* 219 (1987); Frank K. Upham, "Litigation and Moral Consciousness in Japan: An Interpretive Analysis of Four Japanese Pollution Suits," 10 *Law & Soc'y Rev.* 579 (1976).

these settings are fecund with possibilities for further theoretical development of the procedural justice phenomena and with practical applications of the insights that can be drawn from them.

Consider procedural justice in the political arena. An axiom of political science is that in democratic societies government rests upon a consensus of support for its structures, procedures, and the outcomes it produces. Without the legitimacy that this consensus provides, government cannot properly function.<sup>28</sup> Thus, much scholarly attention has been given to the dynamic interactions between government and governed in order to understand the sources and consequences of legitimacy.

The dominant theoretical models bearing on legitimacy are based on variations in "public choice" models of attitudes and behaviors (at 151–53). These models view political decision making as a result of rational, economically self-interested choices: People will attempt to maximize their gains from the political system; they are motivated by a desire for material rewards and the symbols associated with those rewards; and they are more concerned with short-term than long-term gains and losses. Political discontent, according to these theories, results when government and its authorities fail to provide desired economic and social outcomes or when people disagree on which policies are most appropriate to achieve those outcomes.

The models, therefore, focus on outcomes. As explanatory models they have reasonable power but are unable to explain certain paradoxes (e.g., a person's incentive to vote when the individual probability of influencing an election is statistically so small, or voting behavior that appears independent of self-interest). Lind and Tyler argue that fairness of process is also important and that it can explain some behaviors not predicted by public-choice models. A series of studies reviewed in chapter 7 gives support to their contention.

Tyler, Rasinski, and McGraw conducted a survey of randomly selected residents of Chicago about their support for or opposition to policies of the Reagan administration.<sup>29</sup> One finding was that perceptions of the fairness of policies explained more of the expressed satisfaction or dissatisfaction with taxes and benefits than did the personal impact of these taxes and benefits. Fairness judgments were also significant in evaluations of social and economic policies. Another study showed that judgments about the perceived fairness of policies espoused by Reagan and Mondale in the 1984 presidential race were important predictors of voting prefer-

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28. See generally, David Easton, *A Systems Analysis of Political Life* (New York: John Wiley, 1965); Herbert McClosky, "Consensus and Ideology in American Politics," 58 *Am. Pol. Sci. Rev.* 361 (1964).

29. Tom R. Tyler, K. Rasinski, & K. McGraw, "The Influence of Perceived Injustice on Support for Political Authorities," 15 *J. Applied Soc. Psychology* 700 (1985).

ences.<sup>30</sup> Still another study indicated that negative judgments of political policies played a key role in violent antisystem behavior among German workers.<sup>31</sup>

The relationship between judgments of self-interest and procedural fairness, it should be observed, may differ across socioeconomic strata. Disadvantaged persons, in comparison with those who are better off, may place less importance on procedures.<sup>32</sup> Nevertheless, the thrust of Lind and Tyler's interpretation of the data is that perceptions of procedural fairness play an independent and significant role in political behavior. While it may seem "obvious" that appeals to procedural fairness are frequently made by individuals or groups as a means of justifying a self-interested position, the key element in Lind and Tyler's formulation is that procedural justice makes an independent rather than a concomitant contribution to satisfaction and judgments of legitimacy.

Thus, this formulation implies that when difficult or painful policies regarding allocation of some scarce resource must be made, acceptance by the public will be greater if attention is given to procedural fairness. Lind and Tyler provide no hard data to support their speculation, but it is empirically testable. It also seems plausible from anecdotal observations of current public reaction in Canada to a proposed federal tax. The Canadian government has plans to levy a federal goods and services tax to replace the manufacturing tax that now exists. The proposed tax has met very stiff resistance from opposition political parties, union and business groups, and the general public. It would be naive to state that concern about the financial impact of the tax is not a factor in generating this opposition. However, my informal content analysis of the opposition reported in the news media indicates a public that often acknowledges a need for the new tax but has serious reservations about the procedures the government is using to promote the tax and about the procedures under which the tax law will be implemented. As this example shows, there are many opportunities to gather data to test Lind and Tyler's hypothesis.<sup>33</sup>

Procedural justice has also been studied in organizational settings. One part of the research has been devoted to the resolution of conflicts

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30. K. Rasinski & Tom R. Tyler, "Fairness and Vote Choice in the 1986 Presidential Election," 16 *Am. Pol. Q.* 5 (1987).

31. E. N. Muller & T. O. Jukam, "On the Meaning of Political Support," 27 *Am. J. Pol. Sci.* 785 (1977).

32. An alternative possibility is that disadvantaged persons may be less sophisticated in their ability to present their views.

33. A recent study by James L. Gibson, "Understandings of Justice: Institutional Legitimacy, Procedural Justice, and Political Tolerance," 23 *Law & Soc'y Rev.* 469 (1989), examined the relationship between perceptions of procedural justice and unpopular institutional decisions by means of survey data. Gibson concluded that perceptions of institutional procedure had little impact on compliance. However, Gibson also acknowledged that the failure to find the expected relationship may possibly be ascribed to his methodology. See *id.* at 491.

that inevitably arise in organizations. The research findings indicate that procedural fairness in organizational settings is as important in the satisfaction expressed with outcomes as it is in legal settings and that the ability to give voice is central to perceptions of fairness. Because organizations allow great flexibility in the design of resolution procedures, they are rich settings in which to develop theory and test applications of theory in dispute resolution. Because these points were covered earlier in this essay, we can devote our attention here to the body of research that has explored the implications of procedural fairness in allocating resources with respect to organizational attitudes and performance.

The phenomenon of procedural fairness and its underlying dynamics in organizational settings is generally similar to those in political settings. For example, Alexander and Ruderman<sup>34</sup> surveyed the attitudes and perceptions of 2,000 federal employees about job satisfaction, supervisors, turnover intentions, trust in management, and conflict in the workplace. Measures of procedural justice, such as opportunity to participate, appraisal fairness, and fairness of the appeals process, were more important predictors of job attitudes than were distributive justice factors such as judgments of pay fairness, promotion-performance contingencies, and sanctions applied for substandard performance. Somewhat similar results were found in a study of Canadian Armed Forces enlisted personnel.<sup>35</sup>

Judges in legal settings are theoretically independent of the conflict. In contrast one of the characteristics of business and governmental organizations is that the third parties who mediate conflicts or make allocations have an investment in the outcomes. Thus, a supervisor who intervenes in a conflict between two subordinates or who allocates resources between them is also affected by the result. Subordinates are not unaware of this fact. Hence, the perceived fairness of the procedures used in the decision making assumes great importance. Studies described by Lind and Tyler indicate that employees scrutinize procedures carefully to uncover any possible corruption, particularly if the outcomes are not favorable to them. If they find irregularities, they often reevaluate the procedure negatively. For example, a procedure that provides opportunity to give voice may be interpreted as a sham if the allocator of the opportunity is seen to have a vested interest in the allocations. A series of laboratory simulations and field studies indicates, moreover, that these perceptions have direct negative consequences on compliance with organizational rules and on job performance.

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34. S. Alexander & M. Ruderman, "The Role of Procedural and Distributive Justice in Organizational Behavior," 1 *Soc. Just. Res.* 117 (1987).

35. Robin I. Lissak, "Procedural Fairness: How Employees Evaluate Procedures," (Ph.D. diss., University of Illinois, Champaign, 1983).

## HUMAN NATURE AND PROCEDURAL FAIRNESS

In a concluding chapter Lind and Tyler return again to the question of the processes underlying concern with procedural justice. However, their focus is on the underlying assumptions about the psychological person rather than on the more proximal situational factors in the dispute.<sup>36</sup> Posed very simply, they ask whether concern for procedural fairness is based on narrow self-interest or is a consequence of our nature as social animals? The self-interest model views the desire for procedural fairness as instrumental: Fair procedures are seen as increasing the probabilities that the recipient will get what she or he wants. An alternative model, labeled the "group value" model by Lind and Tyler, sees the desire for fairness as the consequence of our socialization in groups: We adopt values of fairness that transcend personal interest; concern with fairness is as much an affective as a cognitive response. Under the group value model, fairness is an end in itself.

Lind and Tyler concede at the outset of their discussion that data exist to support both models and that our present state of knowledge does not permit a unified theoretical explanation. Will one eventually be developed? Lind and Tyler express a desire for a synthesis or integration of the two models of the psychological person, but I am not optimistic that a synthesis will be forthcoming. Both models have ancient philosophical roots and have been debated in attempts to explain many other psychological phenomena. For example, research on the dynamics of altruism has never been able to resolve whether altruistic acts are a curbing of egoistic interests for the greater good of the group or whether they involve a complicated chain of behaviors and cognitions to further one's own welfare or that of offspring.<sup>37</sup>

Closer to the topic at hand, we encounter similar difficulties in explaining other forms of justice reactions. Why, for example, do people have negative emotional reactions to hearing about some remote section of the world where a man tortures his wife, where children starve, or where a corrupt landlord cheats his tenant?<sup>38</sup> The links between our reactions to these unfair distributive justice outcomes and our personal self-interests are at least as difficult to tie down as our concern with procedural fairness in a dispute that has no personal consequences. There is, however, some merit in delineating these two models as explanations of procedural justice reactions. If nothing else, such discussion reminds us that the rational economic models that dominate so much thinking in psychology, politics,

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36. See *supra* notes 14, 15, 16, and accompanying text.

37. See Lauren G. Wispe, "Positive Forms of Social Behavior: An Overview," 28 *J. Soc. Issues* 1 (1972); or *id.*, ed., *Altruism, Sympathy, and Helping: Psychological and Sociological Principles* (New York: Academic Press, 1978).

38. Vidmar & Miller, 14 *Law & Soc'y Rev.* at 565 (cited in note 14).

and law (not to mention economics) are often inadequate in explaining human attitudes and behavior. Procedural justice phenomena, the discussion reminds us, are no exception.

Yet, while acknowledging the merit of not becoming trapped by a narrow economic/instrumental perspective, I think that the literature reviewed in Lind and Tyler's volume raises more immediate questions about procedural justice phenomena. I have already identified the need to give much more attention to questions about forms of disputes and to disputants' motives. Additionally, future research should address the question of why procedural fairness is of more concern to losers and disadvantaged parties.<sup>39</sup> Another set of questions involves people's concern with procedures in relation to outcomes. Do people focus on procedural fairness because it is easier to identify procedural standards than outcome standards? Is it easier to get consensus on them, and are they emphasized because they appear more objective and neutral? Is concern with procedural justice greater when outcomes are imminent? In short, we know that concern with procedural justice is a robust and pervasive phenomenon, but we do not know enough about the immediate psychological mechanisms underlying it. Without better theory regarding these mechanisms, theory that can only be developed through empirical research, explanatory power will be limited.

## CONCLUSION: A MAP AND A BLUEPRINT

A substantial body of literature on procedural justice has accumulated since Thibaut and Walker published their monograph. Lind and Tyler have pulled the literature together and developed a map of the territory. They show that procedural fairness is a significant factor affecting attitudes and behavior in a wide array of settings. They also indicate that real policy implications can be derived from what has been learned. Lind and Tyler do not contend that the book is the final word on procedural justice phenomena. Rather it is an interim report about a continuing scholarly inquiry. Throughout, they carefully point out inconsistencies in data, raise

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39. See John Thibaut, Laurens Walker, Stephen Latour, & Pauline Houlden, "Procedural Justice as Fairness," 26 *Stan. L. Rev.* 1271 (1974). Using the insight from John Rawls's *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), the researchers created conditions that placed disputants either in front of or behind a "veil of ignorance" regarding which procedures would be used to resolve their dispute. Of those in front of the veil, some were advantaged and some were disadvantaged. Those persons in a disadvantaged role or behind the veil showed stronger preferences for procedures that favored disadvantaged parties, whereas advantaged persons showed a preference for procedures that favored advantaged parties. Thibaut et al., 26 *Stan. L. Rev.* at 1283. These findings seem consistent with the findings in studies discussed *supra* at text immediately preceding note 5 and the text around notes 7 and 8. They also are very consistent with the self-interest bias posited by an instrumentalist perspective.

problematic issues in theoretical formulations, and identify new areas for investigation. These areas include identification of the bases of preference for high process control, the potential cultural differences in preferences, the circumstances under which the fairness of procedures does not enhance satisfaction or even cause dissatisfaction, the relationship between objective and subjective procedural justice, the issue of whether procedural preferences are self-serving or grounded in some other normative standards, the relationships between procedural policies and political legitimacy, and the behavioral and social implications of fairness judgments on organizational performance.

The book, therefore, must be seen not only as an attempt to consolidate two generations of research on procedural justice, but also as an attempt to construct a research blueprint for a third generation of research. Although I have raised additional issues that need attention, *The Social Psychology of Procedural Justice* may be fairly judged as achieving that goal.