

**56 DePaul L. Rev. 661**

DePaul Law Review  
Winter 2007

**Symposium**

**Is the Rule of Law Waning in America?**

**Twelfth Annual Clifford Symposium on Tort Law and Social Policy**

**Article**

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## **DOES THE AMERICAN PUBLIC ACCEPT THE RULE OF LAW? THE FINDINGS OF PSYCHOLOGICAL RESEARCH ON DEFERENCE TO AUTHORITY**

### **Introduction**

This Article presents psychological research that explores the reasons that people have for accepting the legitimacy of legal authorities and deferring to their decisions. The findings of this research suggest that Americans generally accept the principles underlying the rule of law and defer to legal authorities when they believe that the authorities are acting in accord with those principles. I will consider three principles associated with the rule of law: rule-based decisionmaking, respect for rights, and respect for persons.

This research indicates that each aspect of the three elements of the rule of law strongly influences individual judgments about, and reactions to, decisions made by judges and police officers. First, when legal authorities act according to the principles of the rule of law, they are viewed as just and trustworthy; this favorable view encourages deference to their decisions. Second, when authorities act in accord with the rule of law, they facilitate a general deference to the law in people's everyday lives. Finally, people prefer having third-party authorities regulate and manage conflicts that arise within public and private arenas, as long as they perceive those authorities to be acting in accord with the principles of the rule of law.

Based on these findings, this Article argues that the public continues to support the ideas underlying the rule of law. There are no signs that trust and confidence in these principles are declining. However, the results of public opinion polls suggest that many Americans believe that legal authorities do not actually act in accord with these ideas. In particular, there are signs of low levels of trust and confidence in legal authorities. Although they support the principles of the \*662 rule of law, Americans may be unwilling to defer to existing legal authorities.

These findings suggest that there is a substantial reservoir of support among the American public for rules and decisions made by authorities. This support, however, depends upon the behavior of the authorities and the manner in which they exercise their authority. Judges--whether local or national--need to conform their actions to rule of law concepts. Based upon this analysis, I argue for an approach through which the legal system can create and maintain public trust and confidence.

In particular, this Article explores whether there is evidence that the American public is moving toward private law because it is unwilling to accept the rule of law. In other words, it considers whether the move toward private ordering that has been observed in the legal arena can be explained as a response to the unwillingness of the American public to defer to the law and

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to the decisions of legal authorities. This reluctance could lead to an unwillingness to empower third parties to resolve disputes or an unwillingness to accept the decisions made by those third parties.

I argue that the public continues to want third parties--such as regulatory or legal authorities--to make decisions, and is willing to defer to those decisions. That support, however, is based upon the belief that those third parties will act in accord with principles defining the rule of law. Hence, whether people prefer public solutions or private solutions to important problems depends upon the character of the public authorities involved.

## II. Background

### A. Procedural Justice

What do people want from courts? One way to answer this question is to explore the factors that shape public **trust** and confidence in the **courts**. This might involve examining the public's general view of the way that courts handle problems. It could also involve a consideration of their personal reactions to their experiences in courts.<sup>1</sup> In either case, the questions are the same: What leads people to have confidence in courts and to be satisfied with the way courts handle the cases that come before them? Why do people defer to law and to the decisions of legal authorities, in the sense that they feel obligated to **\*663** obey them? Why do people voluntarily defer to decisions made by legal authorities and to the regulations those authorities create?

Interestingly, an extensive body of psychological research within the area of procedural justice provides a clear and consistent answer to this question. More than anything else, people react to whether they believe that the courts are dealing with conflicts in a just manner. In other words, people are very sensitive to the way in which public officials exercise their legal authority.<sup>2</sup> They are concerned, in short, with procedural justice.

The most direct evidence of this sensitivity to procedural justice comes from interviews with people who have been personally involved with courts.<sup>3</sup> People go to court for a variety of reasons. They may be in court for help or may appear in response to a complaint filed against them. Regardless of why they are there, people's reactions to their dealings with legal authorities are most strongly shaped by whether they think they have received a fair "day in court." In particular, people are more likely to defer to decisions, both immediately and over time, when they view them as the product of a fair process.<sup>4</sup>

The notion that people are more interested in how fairly their case is handled than they are in whether they win might seem counterintuitive. Nevertheless, numerous studies conducted over the last several decades have consistently found this to be true.<sup>5</sup> Similarly, many studies indicate that general confidence in courts is linked to procedural justice. A recent study of California state courts by David Rottman (Rottman study) found this to be true.<sup>6</sup> That study concluded that "[h]aving a sense that court decisions are made through processes that are fair is the strongest predictor by far of whether members of the public approve of or have confidence in California courts."<sup>7</sup>

**\*664** What makes a process fair in the eyes of the public? Four critical factors dominate evaluations of procedural justice.<sup>8</sup> First, people want to have an opportunity to state their case to legal authorities.<sup>9</sup> They want to have a forum in which they can tell their story; they want to have a "voice" in the decisionmaking process. Second, people react to signs that the authorities with whom they are dealing are neutral.<sup>10</sup> Neutrality involves making decisions based upon consistently applied legal principles and the facts of the case rather than personal opinions and biases. Transparency and openness foster the belief that decisionmaking procedures are neutral. Third, people are sensitive to whether they are treated with dignity and politeness and to whether their rights as citizens and as people are respected.<sup>11</sup> Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing.<sup>12</sup> People react favorably to the perception that the authorities are benevolent and caring and are sincerely trying to do what is best for the public--that is, when they trust that authority.<sup>13</sup> Authorities communicate this concern when they listen to people's accounts and explain or justify their actions in ways that show an awareness of people's needs.<sup>14</sup>

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Of course, this concern about fair procedures does not mean that people do not care about the outcomes of their cases. No one wants to lose. However, studies consistently find that procedural judgments are more central to people's willingness to accept court decisions than the favorability of the outcome.<sup>15</sup> This is true with cases handled through formal trials, as well as those handled through informal processes such as mediation.

What is particularly striking about procedural justice judgments is that they shape the reactions of those who are on the losing side of cases. If people who do not receive a favorable outcome feel that the outcome was arrived at in a just manner, they are more likely to accept it. Studies show that people continue to adhere to fair decisions over time,<sup>16</sup> suggesting that their acceptance of those decisions is genuine \*665 and not simply the result of fear or coercion. Further, people who experience procedural justice in **court** rate the **courts** and **court** personnel favorably, indicating high levels of **trust** and confidence in the **court** system.<sup>17</sup>

These same procedural justice judgments are also a key factor when the general public evaluates the courts as institutions. The findings of the Rottman study are typical of studies of **trust** and confidence in the **courts**. For another example, consider a national survey of public **trust** and confidence in state **courts**;<sup>18</sup> this study also shows that public evaluations of state **courts** are based upon assessments of the fairness of **court** procedures. In particular, people were sensitive to whether the courts protected their rights and to whether they thought that judges were honest. While these procedural justice assessments were the most important factor shaping **trust** and confidence in the **courts**, the interviews showed that people were also sensitive to whether the **courts** treated the members of different groups equally, and to other structural issues of **courts**. However, their primary basis for evaluation was procedural justice.

What is striking about both studies is that the results are true regardless of the race, ethnicity, or economic status of the person involved.<sup>19</sup> Procedural justice concerns are central to people's reactions to courts, regardless of who the people are. Since ethnicity and economic status often shape people's views about what constitutes a fair outcome, it is especially remarkable that there is a general willingness to defer to fair procedures.

Further, there is also general agreement about what constitutes a fair procedure. The four elements outlined--participation, neutrality, treatment with dignity and respect, and **trust** in authorities--generally shape reactions to the **courts**. The use of just procedures is, therefore, an ideal way to bridge differences in backgrounds among disputants in court.

The findings outlined in these studies suggest that people are focused on how legal decisions are being made. That same message flows from the literature on procedural justice, which argues that evaluations \*666 of legal authorities are strongly shaped by judgments about the justice of the procedures through which these legal authorities exercise their authority.<sup>20</sup> As has been shown in the analyses discussed here, procedural justice shapes both decision acceptance<sup>21</sup> and general compliance with the law.<sup>22</sup>

## B. The Rule of Law

The idea of the rule of law has a long history within philosophies of governance and jurisprudence.<sup>23</sup> It is central to early discussions about American law, and is now widely articulated as an important goal for reform throughout the world. As would be expected, such a basic concept is explained in different ways by different authors. This discussion will focus on three core ideas often associated with that concept.<sup>24</sup>

The first aspect of the rule of law is rule-based decisionmaking, which has four elements. First, affected parties can present evidence before decisions are made. Second, decisions are made based on facts and not on personal opinions or biases. Third, rules are consistently applied. Finally, procedures are transparent so people know how and why decisions are being made.<sup>25</sup>

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The second aspect of the rule of law is respect for people's rights and for the principles embodied in the law. Two questions regarding respect for rights and the law will be considered. First, are the decisions consistent with the law, relevant rules, or standards? Second, do legal authorities act in ways that respect an individual's legal rights?<sup>26</sup>

\*667 The third aspect of the rule of law is respect for persons. Here the analysis examines the degree to which people are treated with courtesy and politeness. The focus is on respect for people as individuals who are entitled to treatment with dignity.<sup>27</sup>

By analyzing prior research, I argue that the three ideas underlying the rule of law are important because they shape two key judgments about law and legal authorities: that legal authorities exercise their authority through just procedures, and that legal authorities are trustworthy. These judgments of procedural justice and trustworthiness, in turn, are the antecedents of deference to legal authority.

Of course, in some ways the connection between the elements of the rule of law and procedural justice seems obvious based on the previous discussion of psychological models of procedural justice. The elements included in psychological definitions of procedural justice are similar to those outlined above in the discussion of the rule of law. Hence, it is not particularly surprising that these two perspectives are connected in my analysis, which examines the antecedents of people's general sense that the procedures being used are just. In psychological studies, the elements of procedural justice shape overall views about whether procedures are fair; similar elements of the rule of law shape overall views of fairness. What is most important in both cases is the comparison of the influence of these elements to the influence of the alternative models outlined below.

The alternative model tested was that people are more willing to accept decisions that they judge to be either favorable or fair. It seems straightforward to imagine that the key issue shaping deference is the outcome of the decision itself. If people view the outcome as favorable, they should be more willing to accept it. Some scholars argue that people are more nuanced; they are not necessarily seeking favorable decisions, but are simply seeking decisions that they judge to provide a fair or equitable outcome.<sup>28</sup> In either case, the argument is that people focus on the outcome, rather than whether it was obtained in ways that reflect "the rule of law." Hence, people are viewed as approaching issues in terms of self-interest, in that they focus on the desirability of the outcomes of a procedure, rather than questions about the process itself.

\*668 How do the elements of the rule of law relate to procedural justice? There is a great deal of overlap between the two. For example, the questions asked in the Rottman study on procedural justice can be mapped onto the elements of the rule of law. Thus, to assess rule-based decisionmaking, people were asked whether "court decisions are unbiased."<sup>29</sup> To assess respect for rights, people were asked whether "courts protect constitutional rights" and whether "courts make sure judges follow the rules."<sup>30</sup> Finally, people were asked whether the courts respect people by treating them "with dignity."<sup>31</sup>

The Rottman study found that the majority of Californians believe that courts act in ways that are consistent with each element of the rule of law.<sup>32</sup> The highest ratings were for respect for people, the lowest for factual decisionmaking, with respect for rights in the middle. But in each case, there were also substantial minorities of 20% to 30% that believed that courts did not follow the principles of the rule of law. The study argues that people's reactions to the courts are shaped by the degree to which the courts act in accord with these elements of the rule of law.

### **III. The Rule of Law as an Empirical Issue**

I argue first that the rule of law is based upon a willingness to defer to legal authorities--that is, to their decisions and to the laws they create-- if those decisions and laws are created and implemented following the principles of the rule of law. If the processes through which legal authorities exercise their authority conform to the principles of the rule of law, then the laws made and decisions reached should be more readily and willingly accepted.

#### **A. Deference to the Law During Personal Experiences**

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## 1. Methodology

A key criterion for evaluating the law is whether people defer to the decisions of legal authorities. Such deference was the focus of a study that Professor Yuen Huo and I conducted in Oakland and Los Angeles, California; the results of that study will be used to test the key arguments advanced here.<sup>33</sup> In that study, people with recent personal \*669 experience with the police or the courts were interviewed,<sup>34</sup> with a total of 1656 interviews conducted. The final sample included 586 Whites, 561 African-Americans, and 509 Hispanics.<sup>35</sup>

The primary agency dealt with was the police, with whom people had 86% of their personal contacts. A smaller group of people described experiences with courts, with which people had 14% of their personal contacts.<sup>36</sup> In each case, the survey focused on people's willingness to defer to the decisions made by the legal authority with whom they were dealing.<sup>37</sup>

In the context of a specific legal decision, deference was measured in three ways. First, the person's willingness to voluntarily accept the decision was noted.<sup>38</sup> Second, interviewers recorded people's expressions of satisfaction or dissatisfaction with the decision made by the police officer or the judge.<sup>39</sup> Third, people indicated their favorable or unfavorable feelings toward the authority involved in making the decision.<sup>40</sup> My analysis combines these three aspects of deference into a single indicator.

Do people defer to legal authorities because those authorities follow the principles enshrined in the rule of law? I will examine a two-stage model in which the elements of the rule of law shape judgments of procedural justice and trustworthiness, which in turn influence the willingness to defer to the law. This model is drawn from my prior work on deference to legal authority--work which identified procedural \*670 justice and trust as the key antecedents of the willingness to defer to legal authorities.<sup>41</sup>

Procedural justice involves the fairness of the manner in which authorities exercise their authority. Thus, people were asked whether they felt that the authority with whom they dealt had made decisions in ways that reflected the use of just procedures.

Trust is linked to inferences about the character of the authorities with whom individuals are dealing. When people encounter an authority figure, they try to infer from the authority's actions whether that person should be trusted. To assess trustworthiness, people attempt to infer whether the authority is benevolent and caring and is trying to do the right thing for those involved in the situation.<sup>42</sup>

The influence of these factors is compared to that of two other factors shaping deference: the favorability<sup>43</sup> and the fairness<sup>44</sup> of decisions. Again, an alternative reason that people might accept decisions is that they view them as favorable or fair. It seems generally self-evident that people are more likely to defer to decisions that are favorable to themselves.

## 2. Procedural Justice, Trust, and Deference

Do procedural justice and trust shape deference?<sup>45</sup> First, consider situations in which people go to court. Taken together, procedural \*671 justice, trust, and outcome judgments explain 82% of the variance in deference to decisions made by judges.<sup>46</sup> Considered alone, procedural justice and trust explain 79% of the variance. Hence, when they deal with the **courts**, people are primarily focused on issues of procedural justice and **trust**, not outcome favorability or outcome fairness.<sup>47</sup> This is consistent with the prior findings of the literature on procedural justice and trust.

When people deal with the police, the same four judgments explain 85% of the variance in deference. Procedural justice and trust together explain 84%. Again, when they deal with the police, people focus primarily on procedural justice and on trust, rather than on outcome favorability or outcome fairness.<sup>48</sup> These findings are consistent with what Huo and I argued when we suggested that procedural justice and trust are the key antecedents of deference.<sup>49</sup>

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While both factors matter, the results of the analysis repeatedly point to trust as especially important in experiences with legal authorities. This is consistent with prior evidence suggesting that when people are dealing with particular authorities, inferences about the trustworthiness of those authorities are central to their reactions.<sup>50</sup>

### 3. Indices Reflecting the Rule of Law

To test the argument that the rule of law matters, an index of each of the three aspects of the rule of law was created. The first aspect of the rule of law involves rule-based decisionmaking. Respondents were asked whether the authority allowed them to tell their story, made neutral decisions, consistently applied rules, and acted transparently. \*672<sup>51</sup> The second aspect of the rule of law involves respect for rights. Respondents were asked whether the authorities made decisions consistent with the law and whether they acknowledged and showed concern for people's rights.<sup>52</sup> Finally, respect for persons involves treating people with respect, courtesy, and dignity during legal procedures.<sup>53</sup>

The scales used to assess the perceived rule of law ranged from 1 to 4, with 4 reflecting strong agreement that rule of law elements were present, and 1 indicating strong disagreement. An examination of the average level of rule-based decisionmaking indicated an average of 2.98 for courts and 3.10 for the police. Average respect for the law was 2.87 for courts and 2.98 for the police. Average respect for people was 3.25 for courts and 3.27 for the police. As in the Rottman study, in which people rated the general characteristics of courts, the ratings of personal experience in this study were somewhat favorable. Certainly, these ratings were higher than ratings of outcome fairness. The mean outcome fairness was 2.68 for courts and 2.76 for the police.

Authorities were rated moderately or favorably on scales assessing the degree to which they acted in accordance with principles of the rule of law. These findings, which come from judgments of particular experiences with legal authorities in California, are generally similar to the global ratings reported in the Rottman study. They suggest that the public is somewhat favorable in its rating of the actions of legal authorities, seeing those actions as consistent with the rule of law. On the other hand, the ratings are intermediate, and do not reflect universally high levels. People indicated that the authorities with whom they dealt acted in ways that were generally consistent with the principles of the rule of law, but they did not give those authorities the highest possible ratings.

### \*673 4. Analysis

Did people's willingness to defer to the decisions made by the authorities change depending upon the degree to which the authorities acted in ways consistent with the rule of law? To test this argument, judgments about the degree to which the behavior of the authorities was consistent with the rule of law were examined using regression analysis.

The analysis indicates that, for those people dealing with **courts**, a combined equation including indices of the rule of law and of outcome valence explains 73% of the variance in procedural justice, 79% of the variance in **trust**, and 81% of the variance in the willingness to defer. For those dealing with the police, the equation accounts for 75% of the variance in procedural justice, 83% of the variance in trust, and 84% of willingness to defer. Hence, most of the variance in people's reactions to their personal experiences is explained by the judgments contained within this study.

As was true in the prior analysis, outcome judgments have very little to do with procedural justice or trust. In the case of **courts**, 73% of the variance in procedural justice, 78% of the variance in judgments of **trust**, and 80% of the variance in deference is explained by rule of law judgments. Hence, we can understand these overall judgments equally well with or without information about outcomes. Similarly, in the police analysis, 75% of the variance in procedural justice, 83% of the variance in trust, and 84% of the variance in deference is explained by rule of law judgments alone. Outcomes were again basically irrelevant. People react to their experiences largely in terms of the degree to which they judged that the authorities did or did not act in terms of the ideas underlying the rule of law.

Another approach to this question examines how much weight people put on their outcomes and on rule of law judgments when considered together.<sup>54</sup> First, one must consider whether people believe that the authorities acted with procedural justice. When dealing with the courts, procedural justice reflected rule-based decisionmaking,<sup>55</sup> respect for rights,<sup>56</sup> and respect for

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persons.<sup>57</sup> The primary factor was \*674 rule-based decisionmaking. In contrast, neither outcome favorability<sup>58</sup> nor outcome fairness<sup>59</sup> was important. With the police, procedural justice was linked to rule-based decisionmaking,<sup>60</sup> respect for rights,<sup>61</sup> respect for persons,<sup>62</sup> and outcome favorability.<sup>63</sup> Again, the primary factor was rule-based decisionmaking. If the authorities acted based upon the neutral application of rules, people thought they were acting in accord with fair procedures. In this case, outcomes were not totally ignored, but they had only a secondary influence.

Second, consider the issue of trust. When dealing with the **courts**, people's **trust** was shaped by rule-based decisionmaking,<sup>64</sup> respect for rights,<sup>65</sup> and respect for persons,<sup>66</sup> but not by outcomes.<sup>67</sup> When dealing with the police, people's trust was linked to rule-based decisionmaking,<sup>68</sup> respect for rights,<sup>69</sup> respect for persons,<sup>70</sup> and outcome favorability.<sup>71</sup> **Trust in courts** was linked primarily to respect for people's rights, while **trust** in the police was linked primarily to rule-based decisionmaking and respect for persons. Again, outcomes were not a primary factor shaping trust.

Finally, consider the direct influence of rule of law judgments on the willingness to defer to authority. When dealing with courts, deference was based on rule-based decisionmaking,<sup>72</sup> respect for rights,<sup>73</sup> respect for persons,<sup>74</sup> and outcome fairness.<sup>75</sup> When interacting with the police, deference was based on rule-based decisionmaking,<sup>76</sup> respect for \*675 rights,<sup>77</sup> respect for persons,<sup>78</sup> outcome favorability,<sup>79</sup> and outcome fairness.<sup>80</sup> With both the police and courts, willing deference occurred when the authorities were judged to be engaged in rule-based decisionmaking, and outcome judgments had only a minor influence.

These findings indicate that variations in the empirical approach produce basically the same results--the rule of law is important. Respondents defer to decisions made by judges and police officers when they believe those officials are exercising their authority in ways consistent with the principles of the rule of law. This empirical approach demonstrates the importance of the rule of law by showing that the ability of courts and the police to gain the public's acceptance is dependent upon public judgments that courts and the police are acting in ways that are consistent with the rule of law. It also shows that both procedural justice and trust shape deference, and that the elements of the rule of law are important in shaping procedural justice and trust.

What emerges is that **trust** is most central to deference among those who deal with both the police and the **courts**. This focus on trust suggests that people are less concerned with what authorities do than with who the authorities are-- the nature of their character and motivation. This does not mean that we should ignore issues of procedural justice. In fact, the data on personal experiences with the police and **courts** suggest that both procedural justice and **trust** shape deference.<sup>81</sup> Trust, however, is crucial--it is strongly linked to the rule of law. The key message that these findings send to legal authorities seeking deference to their decisions is that the public responds based on its assessments of how they exercise their authority. Deference is not automatic.

## B. Deference Toward the Law in Everyday Life

Rather than focus only upon deference in particular situations, we can also consider general reactions to the law in people's everyday lives. In the case of people's broader relationship to legal authority, the question is not deference to a particular decision, but general support for and deference to the law. The question is the same: Do people defer to the law because they view the law as operating in accordance with the principles of the rule of law?

### \*676 1. Methodology

My examination of this issue is based upon a survey of the residents of New York City.<sup>82</sup> The analysis focused on the police and people's willingness to defer to and cooperate with police officers. While the focus of this study is on the police, not the courts, prior research suggests that people's reasons for deferring to the police and the courts in their everyday lives are similar.<sup>83</sup>

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This analysis uses a general measure of deference that combines viewing the law as legitimate,<sup>84</sup> complying with the law,<sup>85</sup> and cooperating with the police to fight crime.<sup>86</sup> Such an orientation toward the law reflects a general willingness to cooperate with legal authorities by following their directives and deferring to their decisions.

## 2. Procedural Justice, Trust, and General Deference

In considering general deference, I used the same approach that I used to explore the factors shaping deference to particular decisions. That approach first considers the roles of procedural justice<sup>87</sup> and trust<sup>88</sup> in shaping general deference. The argument, as before, is that \*677 if people believe that legal authorities act in accordance with principles of procedural justice and are trustworthy, they will defer to those legal authorities by following the law in their everyday lives.

The role of procedural justice and trust is compared to four indices of police performance: (1) the perceived quality of police performance,<sup>89</sup> (2) fear of crime victimization,<sup>90</sup> (3) an assessment of neighborhood conditions,<sup>91</sup> and (4) the perceived risk of being sanctioned for rulebreaking.<sup>92</sup> These indices reflect various ways of evaluating the quality of police performance. They reflect the notion that people cooperate with the police when they believe that the police are effectively controlling crime and disorder.

An examination of the mean level of the variables suggests a similar conclusion to the one found in the examination of particular experiences. People's views about the rule of law characteristics of the police were assessed on a scale ranging from 1 to 4, with 4 being highly positive and 1 being highly negative. The mean level of procedural justice was 3.42; the mean level for trust was 3.02. Rule-based decisionmaking was 3.01, with respect for rights at 3.16 and respect for persons at 3.29. Personal distributive justice was 2.51, with group-based distributive justice at 2.29, performance at 3.29, risk of sanctioning at 2.69, fear of crime victimization at 3.15, and neighborhood crime conditions at 2.91.

## 3. Analysis

Do judgments of procedural justice and trust influence deference? Taken together, these indices explain 24% of the variance in general deference. As in the prior analyses, procedural justice and trust account for 22% of the variance, suggesting that instrumental indicators of police performance have little to do with general deference. People \*678 defer to law and to legal authorities primarily because they trust those authorities and think they are exercising their authority through just procedures.

When we consider the separate factors involved, we find that trust is the most important factor<sup>93</sup> and that procedural justice has a secondary influence.<sup>94</sup> General deference is also higher if there are credible risks of sanctions,<sup>95</sup> in neighborhoods with low crime,<sup>96</sup> and with effective police.<sup>97</sup> As was true with particular decisions, people's general deference is more strongly related to trust than it is to procedural justice, but both procedural justice and trust again play distinct roles in encouraging general deference.

## 4. The Influence of the Rule of Law

The key issue of concern is the influence of people's judgments about the three elements of the rule of law: rule-based decisionmaking,<sup>98</sup> respect for rights,<sup>99</sup> and respect for persons.<sup>100</sup> We can compare the influence of these indicators of the rule of law to indices of crime and police performance in fighting crime. We can also compare the influence of the rule of law to indices of police distributive fairness. Two such indices are considered: fairness to groups<sup>101</sup> and fairness to the respondent.<sup>102</sup>

First, do judgments regarding the rule of law explain whether people think that the police are acting with procedural justice? Overall, 37% of the variance in procedural justice was explained by rule of law judgments and outcome judgments considered together, and 37% was explained by rule of law judgments alone. In other words, outcome \*679 judgments, including the fairness of the distribution of police services, do not add to the ability to understand deference to the police. In this analysis,

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the key issues were respect for persons<sup>103</sup> and respect for rights.<sup>104</sup> The quality of police performance<sup>105</sup> and neighborhood conditions were also influential.<sup>106</sup> The central concern underlying procedural justice, however, is respect for persons.

Does the rule of law shape trust in the police? Overall, 65% of the variance in trust was explained, and 65% was explained by the rule of law factors alone. The key issues were rule-based decisionmaking,<sup>107</sup> respect for rights,<sup>108</sup> and respect for persons.<sup>109</sup> In addition, police performance mattered.<sup>110</sup> But the key judgment underlying trust is rule-based decisionmaking.

Finally, what is the direct influence of the rule of law on general deference to the police and to the law? Overall, 31% of the variance was explained, and 27% was explained by the rule of law factors alone. The key factors were rule-based decisionmaking,<sup>111</sup> respect for rights,<sup>112</sup> and respect for persons.<sup>113</sup> In addition, risk had a minor influence on deference,<sup>114</sup> as did distributive justice to groups.<sup>115</sup> Deference is directly influenced by rule-based decisionmaking and respect for people's rights.

These findings support those already outlined regarding deference to specific decisions. They suggest that general deference to legal authorities is shaped largely by the elements of the rule of law. What do they tell us about the relationship between the rule of law and deference, both to particular decisions and to the law in everyday life? They support the arguments already outlined in the literature on procedural justice. People's deference to legal authorities is generally based on issues that are linked to both procedural justice and trust.<sup>116</sup> \*680 Neither the performance of the authorities nor the decisions they render are key antecedents of deference.

In the case of the elements of the rule of law, the central aspect shaping deference is rule-based decisionmaking, which includes factual decisionmaking, the consistent application of rules, and the lack of prejudice and bias. In addition, people pay attention to whether the authorities are respecting their rights and respecting them as people. So, the ability of the rule of law to be an effective basis for the exercise of legal authority seems clearly supported by the findings outlined here.

### C. Deference to the U.S. Supreme Court

The argument that adherence to the rule of law leads to deference to the courts has also been made on the national level. For example, Professor Gregory Mitchell and I explored factors shaping deference to the Supreme Court in a survey of a sample of the residents of the San Francisco Bay area.<sup>117</sup> Our study examined whether people were more willing to defer to the decisions of the Court, including controversial decisions such as the decision to allow abortions, if they believed that the Court adhered to the principles underlying the rule of law.<sup>118</sup>

#### 1. Methodology

The focus of the Supreme Court study was deference to the role of the Court in interpreting the Constitution.<sup>119</sup> People were asked whether they believed that the Court ought to have the authority to determine the meaning of the Constitution. As in the analyses already outlined, the study examined the degree to which assessments of the **Court's** role were shaped by (1) judgments about whether the **Court** made decisions through procedural justice,<sup>120</sup> (2) **trust** in the **\*681 Court**,<sup>121</sup> or (3) agreement with **Court** decisions.<sup>122</sup> Again, it seems natural to imagine that people would more willingly defer to the Court if they agreed with its decisions. However, the essence of the rule of law is that people defer to the Court if it adheres to principles, even if the result is unfavorable.

#### 2. Analysis

The first empirical question examined the antecedents of deference to the Court. Deference is linked to judgments about the **Court's** procedural justice,<sup>123</sup> to **trust** in the **Court**,<sup>124</sup> and to agreement with **Court** decisions.<sup>125</sup> The procedural justice of the Court's decisionmaking procedures is the most important element shaping deference to its authority.

What about the influence of the elements of the rule of law? The study did not measure respect for persons, but it did measure rule-based decisionmaking<sup>126</sup> and respect for rights.<sup>127</sup> The influence of these factors can again be compared to that of agreement with the Court's decisions. The empirical analysis indicates that evaluations of the Court's procedural justice are shaped by respect for rights,<sup>128</sup> rule-based decisionmaking,<sup>129</sup> and by agreement with decisions.<sup>130</sup> Trust in the Court is shaped by respect for rights,<sup>131</sup> rule-based decisionmaking, \*682<sup>132</sup> and agreement with decisions.<sup>133</sup> Deference to the Court is directly shaped by respect for rights<sup>134</sup> and agreement with decisions.<sup>135</sup>

Overall, this empirical analysis of public deference to the Court's role as an interpreter of the Constitution supports the argument that people defer to the Court when they believe it acts in accord with the principles of the rule of law. People defer to the Court primarily when they think it uses fair procedures when making its decisions, and this procedural justice influence is clearly stronger than agreement or disagreement with Court decisions. Procedural justice and trust in the Court are primarily a function of the belief that the Court respects people's rights. Hence, the key element of the rule of law that is important in the case of the Supreme Court is its respect for people's rights.

#### **D. Deference to Government and Regulatory Authority: Do People Prefer Private Solutions to Problems in Their Lives?**

Another important question is whether people prefer to resolve personal and social conflicts privately rather than using regulatory authorities. It is certainly reasonable to expect that people would prefer to retain control over decisions that influence their lives. Consistent with this argument, early models of procedural justice presented an image of people as resistant to giving up control over decisions to a third party.<sup>136</sup> Several studies speak to this issue by examining whether and why people are willing to accept third-party decisions about issues that are important to them.

##### 1. Resolving Public Distribution Problems

###### a. Methodology

Professor Peter DeGoey and I interviewed residents of the San Francisco Bay area about how they wanted to resolve a social conflict over the allocation of a scarce resource--water during a drought.<sup>137</sup> The 401 respondents in the study were given a number of choices, including allocation through free markets in which the price of water was raised until supply and demand were balanced, or allocation \*683 through the decisions of regulatory authorities who would make rules shaping water use.<sup>138</sup> When asked whether households should decide how much water to consume through market decisions, only 28% said this was a desirable approach, while 73% indicated that government authorities should decide to whom water is allocated and 74% indicated that there should be legal rules to shape the allocation of water. People generally preferred a regulatory solution.

###### b. Analysis

Why did people believe that regulatory authorities should have power to decide? To determine this, people were asked to indicate their views about the actions of the Public Utilities Commission (PUC), the regulatory body that makes and enforces water use rules. If people thought that the PUC made decisions through fair procedures, they more strongly supported the use of government authority to resolve the conflict.<sup>139</sup> Trust in the authority did not matter.<sup>140</sup> Similarly, the favorability of past decisions of the PUC for the respondent did not shape views about the desirability of government action.<sup>141</sup>

Those people who said that the regulatory agency made decisions fairly indicated that they personally would be more likely to voluntarily defer to regulatory decisions.<sup>142</sup> Neither trust<sup>143</sup> nor decision favorability<sup>144</sup> shaped personal intentions. People were also asked about other people in their community. They indicated that if the PUC was trusted, most people in the community would defer to its decisions.<sup>145</sup> Procedural justice<sup>146</sup> and decision favorability<sup>147</sup> influenced what respondents thought most

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people in the community would do.<sup>148</sup> Finally, people indicated that the government was likely to manage water effectively if it made its decisions fairly<sup>149</sup> and if those decisions were favorable.<sup>150</sup> People did not believe that trust in the **\*684** government would shape its effectiveness.<sup>151</sup> Overall, people believed that both procedural justice and trust shape reactions to the government.

Did the elements of the rule of law matter? Three indices reflecting the rule of law were created to assess views about the regulatory agency. Deference reflected the degree to which decisions were made in neutral, rule-based ways.<sup>152</sup> Respect for people's rights as citizens was also measured.<sup>153</sup> Finally, respect for persons--treatment with dignity--was assessed.<sup>154</sup>

The factors that shaped judgments about the procedural justice of the regulatory agency were whether it showed respect for citizens' rights,<sup>155</sup> respect for persons,<sup>156</sup> and the favorability of its outcomes.<sup>157</sup> Factors that mattered in shaping trust in the regulatory agency were rule-based decisionmaking,<sup>158</sup> respect for persons,<sup>159</sup> and respect for rights.<sup>160</sup> Factors that shaped whether people wanted a government, as opposed to a market, solution were respect for rights<sup>161</sup> and outcome favorability.<sup>162</sup> Factors that shaped whether people said they would voluntarily defer to government rules<sup>163</sup> were respect for rights<sup>164</sup> and outcomes.<sup>165</sup> Finally, factors shaping whether respondents thought that the government was likely to be effective were respect for rights<sup>166</sup> and outcomes.<sup>167</sup> Hence, respect for persons and for rights consistently shaped reactions to government decisions.

**\*685** Overall, this study suggested that the procedural justice of government is central to the willingness of citizens to give their representatives the authority to manage a community problem, and that procedural justice, in turn, is linked to issues of the rule of law. In particular, evidence of respect for people's rights and for people themselves were key antecedents of viewing the government as procedurally just. In this situation, respect for people's rights emerged as a key factor in people's willingness to defer to government authority. Trust in authorities was also important, and was shaped by similar factors.

## 2. Public Versus Private Distribution Problems

More recently, Professor Harris Sondak and I examined the factors that shape whether people want to use markets to resolve conflicts.<sup>168</sup> Two types of conflict were explored. First, respondents were presented with public conflicts involving the allocation of benefits and burdens. The benefit involved increased police patrols for some neighborhoods, while the burden was accepting a halfway house in one's neighborhood.<sup>169</sup> Other respondents were presented with private conflicts involving their workplace.<sup>170</sup> The benefit was a desirable work feature--a good parking spot--while the burden was having to work on a holiday.<sup>171</sup>

### a. Methodology

People were asked about the ability of the procedure to produce an outcome that they would be willing to accept. Two procedures were presented.<sup>172</sup> The first was a market solution. In the public conflict scenario, the solution was to give the increased police patrols to the community willing to pay the most for them, and to give the halfway house to the community willing to accept the least amount of money to house it. In the private conflict scenario, the solution was to give **\*686** the parking spot to the person willing to pay the most for it, and give the holiday assignments to those employees willing to work on holidays for the least additional compensation. The second solution was having an authority in the community or work organization decide what was best.

### b. Analysis

In general, people prefer having an authority make public allocation decisions to making those decisions through the market (mean = 3.64 for authority versus 3.07 for market on a scale of 1 to 7, with higher numbers being more desirable). Again, with private conflicts, people prefer having an authority make the allocation decision to making that decision through a market (mean = 4.12 for authority versus 3.35 for market).

To understand why people prefer procedures in which authorities make the decisions, the study examined the role of procedural justice,<sup>173</sup> trust,<sup>174</sup> and expected outcome favorability<sup>175</sup> in shaping the anticipated willingness to accept the decisions of the third-party authority.<sup>176</sup> For public disputes, 65% of the variance in deference to authorities is explained by judgments about their procedural justice, trustworthiness, and anticipated outcome favorability.<sup>177</sup> Each factor was important, with significant influences found for procedural justice,<sup>178</sup> trust,<sup>179</sup> and anticipated outcome favorability.<sup>180</sup> In this case, procedural justice judgments mattered more than trust. For private disputes, 66% of the variance is explained. In this case, procedural **\*687** justice was central,<sup>181</sup> with a lesser influence from outcomes.<sup>182</sup> Again, procedural justice judgments mattered more than trust. In both public and private allocations, the procedural justice of the third-party procedure was central to the anticipated willingness to defer to its decisions, with trust playing a secondary role.

What about the role of judgments reflecting the elements of the rule of law? To examine the importance of the rule of law, indices of rule-based decisionmaking,<sup>183</sup> respect for rights,<sup>184</sup> and respect for persons<sup>185</sup> were created and combined with anticipated outcome favorability to examine the factors shaping the willingness to defer to decisions.

In public disputes, procedural justice was shaped by respect for persons,<sup>186</sup> respect for rights,<sup>187</sup> and expected outcome favorability.<sup>188</sup> In private disputes, procedural justice was shaped by respect for persons,<sup>189</sup> respect for rights,<sup>190</sup> rule-based decisionmaking,<sup>191</sup> and expected outcome favorability.<sup>192</sup> In public disputes, trust is shaped by respect for persons,<sup>193</sup> respect for rights,<sup>194</sup> rule-based decisionmaking,<sup>195</sup> and expected outcome favorability.<sup>196</sup> In private disputes, trust is shaped by respect for persons,<sup>197</sup> respect for rights,<sup>198</sup> rule-based decisionmaking,<sup>199</sup> and expected outcome favorability.<sup>200</sup> With public disputes, deference is shaped by respect for persons,<sup>201</sup> respect for rights,<sup>202</sup> rule-based decisionmaking,<sup>203</sup> and expected outcome **\*688** favorability.<sup>204</sup> With private disputes, deference is shaped by respect for persons,<sup>205</sup> respect for rights,<sup>206</sup> and expected outcome favorability.<sup>207</sup>

These findings generally suggest that, in both public and private settings, people placed great emphasis on respect for rights and for people when deciding whether using an authority would be a good way to resolve a dispute and whether they would be willing to accept decisions arising from such procedures, and less emphasis on rule-based decisionmaking. This was true regardless of whether the decision involved a public or a private allocation. People also wanted procedures that would give them the outcomes they favored.

More generally, these results suggest that people want authorities to make allocation decisions, so long as those authorities act in accord with the rule of law. In particular, the desirability of having authorities make decisions is rooted in the anticipated respect for rights and for persons. When people anticipate receiving respect from authorities, they strongly support the idea of having them make decisions. In addition, it is clear that people consistently choose procedures that they anticipate will lead to desirable outcomes. Therefore, people do not simply respond to the rule of law--they also like to win!

Our findings came out of studies that presented people with hypothetical scenarios about future allocations. However, the study of the NYPD also asked participants about hypothetical issues of public and private ordering. People were asked whether they feel that police services should be allocated by need or by equity. Overall, 90% indicated that equal services are fair; 96% indicated that need is best and 37% indicated that those who pay more taxes deserve higher patrols.<sup>208</sup> This distinction between principles is important since both need and equity require giving discretionary authority to the police.<sup>209</sup> If people did not want the authorities to have decisionmaking power, they should prefer equal allocations, which minimize the authority of the police.

**\*689** One way that police services can be allocated is by need, with high crime areas receiving the greatest number of police officers. This is, in fact, the most widely endorsed approach to allocating police resources. Why would people support giving the police the power to make such need-based decisions? Analysis indicates that if people think that the police exercise their authority with procedural justice and are trustworthy, they are more likely to support policing based upon need. In contrast, the effectiveness of police performance in fighting crime is not significantly related to support for need-based policing.

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What about the generally unfair policy of giving more police services to affluent areas? People are more supportive of this approach if they trust the police. Again, the effectiveness of police performance is not related to support for equity. People are supportive of giving authority to the police when they believe that the police are trustworthy and follow fair procedures.

People, in other words, are giving the police authority to the degree that the police are viewed as exercising that authority in appropriate ways. The police are not being given authority because they are regarded as better at fighting crime; rather, the fairness of their actions is being assessed.

### E. Trust and Confidence in the Law

This argument incorporates several different judgments that members of the public make about law and legal authorities. Those judgments include the justice of the procedures by which legal authorities exercise their authority, trust in the motivations underlying the decisions of those authorities, and the three elements associated with the rule of law: rule-based decisionmaking, respect for people's rights, and respect for persons. In considering the argument that public support for legal authorities is declining, I will focus on trust and confidence.

Legal authorities generally recognize the importance of having the **trust** and confidence of the public:

A **court** that does not have the **trust** or confidence of the public cannot expect to function for long as an effective resolver of disputes, a respected issuer of punishments, or a valued deliberative body. This is true regardless of whether we are talking about a trial court or the supreme appellate court.<sup>210</sup>

**\*690** Relatively good data on trust and confidence in local and national institutions are available. Using national indices of trust and confidence, we can ask whether trust and confidence are declining. The background for this discussion is the evidence of declining trust in the government.<sup>211</sup> For example, responses to the question, "How much of the time can you trust the government to do what is right?" are said to show a decline in trust from the 1950s to recent years.<sup>212</sup> This argument extends beyond the government to include other major institutions.<sup>213</sup>

It would be tempting to conclude from this argument that there is an increasing lack of confidence in the law, in police, and in courts. But I do not think that such an argument is supported by the evidence that is currently available in public opinion polls. First, it is important to note that a rich body of historical ratings of government and business is not available in the area of law and courts. Any conclusions are, as a result, more speculative than conclusions regarding trust in government.

A major source of information on public views about law, courts, and the police is the sourcebook provided by the National Institute of Justice.<sup>214</sup> Public trust and confidence in legal authorities can be explored using the data provided in that sourcebook. The first focus of concern is the police. Americans were asked whether they believe that the police generally have high levels of ethics.<sup>215</sup> Respondents were also asked whether they have a great deal of trust in the police.<sup>216</sup> The findings from this study suggest two conclusions. First, **\*691** trust and confidence in the police are not declining, and may even be rising. Second, general levels of trust and confidence are low.

Local courts were evaluated using two questions. The first question was whether respondents had a great deal of trust and confidence in the criminal justice system. This question does not specifically target courts, but rather reflects general views about police, courts, and the law. There is no evidence that trust and confidence are declining.<sup>217</sup> But the suggestion that trust and confidence are low is supported even more strongly than is the case with the police.

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Finally, the surveys measure **trust** and confidence in the Supreme **Court**.<sup>218</sup> Between 70% and 90% of respondents expressed low levels of **trust** and confidence in the **Court**. As was true with local legal authorities, these responses do not suggest that **trust** in the **Court** is declining, but it is low.

It is difficult to know what level of public trust legal authorities need to do their jobs well.<sup>219</sup> Beyond the general recognition that higher levels of trust and confidence are better, it is uncertain whether the low levels of trust and confidence found in these studies ought to be a matter of concern for legal authorities. Within the literature on trust in government, arguments about the dangers of low levels of trust are more fully developed.<sup>220</sup>

The findings suggest that trust and confidence in the legal system, while they may be low, are not declining. Hence, the evidence does not suggest that decreasing trust and confidence are fueling greater privatization. However, it seems clear that the American public is not rejecting either the rule of law or the possibility of third-party regulation. On the contrary, people generally appear willing to defer to authorities \*692 who make decisions in ways consistent with the ideas underlying the rule of law.

#### IV. Conclusion

My argument suggests two conclusions. First, Americans are strongly committed to the ideas enshrined in the concept of the rule of law. Those ideas shape reactions to both local and national legal authorities. Further, they influence both the willingness to accept decisions and the willingness to empower legal authorities to resolve problems and make rules.

Second, there is evidence that the legal system is not viewed as living up to those ideals. From my reading, that evidence is more supportive of the view that there are low levels of trust and confidence, rather than of evidence of decline. The data suggest that trust and confidence are low, and have been low for several decades.

If we combine this evidence of low levels of trust with earlier findings that suggested legal authorities do not follow rule of law principles, a consistent picture of mild discontent emerges. The evidence does not support an alarmist view or suggest that the public is losing faith in law or in legal authorities. It suggests that people view legal authorities in generally positive ways, but they also see flaws; those flaws seem more important with courts than they do with the police.

One important caveat is that the evaluations of local courts are more directly aimed at criminal law than at civil law. However, many of the issues that people deal with in courts are civil issues. Hence, the attention of public opinion polls has been toward only one aspect of legal authority, and one toward which the public might have more negative views.

The primary way that people have personal experience with the police is when they approach officers and ask for help. The police enforce laws and impose sanctions upon the public, but that is not their primary mode of contact with people in the communities in which they work. Hence, both courts and the police have an important service provision function that goes beyond sanctioning criminal conduct.

The data I have outlined have implications for the causes of decline in public **trust** and confidence in the law, **courts**, and the police. They also have implications for fixing those problems. These findings also suggest the value of building public **trust** and confidence by designing **court** procedures that lead the people who personally deal with the **courts** to have positive experiences. Based on the Rottman study, efforts should concentrate on traffic, family, and juvenile courts, where \*693 dissatisfaction is currently high. They should be directed at all members of the community who deal with the legal system, since the same survey indicates that jury duty or serving as a witness also educates people about the legal system.

What type of reform is needed? The specifics will vary depending upon the particular context. However, some general arguments can be made. First, consider the many people who come to court to be involved in a case as jurors and as witnesses. What could be done to improve their experiences with courts?

First, it is important to provide people with information acknowledging their rights and to give them a contact person to whom they can express concerns and complaints if they feel mistreated. Respect for people is enhanced if this person has reasonably

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high status within the organization (e.g., the chief judge, the police chief) or if the organization has created someone to represent those in the public who have concerns (e.g., an ombudsperson, an ethics officer). People value the acknowledgement of their rights and status. The right to go to the courts to seek justice is central to the meaning of membership in our democratic society. Thus, it is important to people to have those rights acknowledged when they seek to use the courts. In general, people react to whether they feel treated with politeness, dignity, and respect.

It is also important to explain procedures and account for decisions. Providing people with information that explains how the **courts** work in ways that make clear what they need to do and what is going to happen is central to creating **trust**. When legal authorities make decisions, they need to explain why they are deciding as they are, regardless of who wins or loses. It is particularly helpful if authorities acknowledge the concerns of those involved, and indicate that they have considered those concerns when making their decisions, regardless of whether they can give people what they have asked for. Understanding how things work and why events are happening are strongly associated with viewing procedures as fair.

Many people come to court because they are parties to a case. The issues already raised apply to those with cases before the courts because research suggests that fair procedures and trustworthy authorities are important antecedents of satisfaction with how one's case is handled. Those before the courts also want an opportunity to explain the concerns that brought them to court. Studies suggest that people are much more willing to accept third-party decisions about how to resolve their disputes if they feel they have had a chance to tell their stories.

**\*694** When a decision is being presented, authorities should emphasize that it accords with the ideas underlying the rule of law. In particular, they should explain the decision by reference to rules and legal principles that show the decision is not based upon personal prejudice or bias. People are more accepting of a decision if they understand the principle of law behind it. When decisions go against a person, it is important to show that the decision was made by properly applying rules to the relevant facts. Authorities should also communicate that people's concerns were heard and taken seriously. If possible, they should acknowledge valid issues that were raised by the parties, even when indicating that those concerns cannot be addressed. People focus heavily upon whether the authority considers the needs and perspectives they have expressed, especially when the decision goes against them.

In general, the ideas underlying the rule of law provide clear guidelines for how decisions should be made and explained. Those guidelines provide for rule-based decisionmaking, respect for people's rights, and for the standards and principles of the law. And the rules provide for respect for people, as reflected in treatment with dignity, courtesy, and respect. These elements of the exercise of authority lead people to view decisionmaking procedures as just and to regard the authorities involved in making them as trustworthy.

Of course, many people lack personal experience with the legal system. In particular, studies suggest that people are much more likely to have had personal contact with the police than with courts. Hence, there is also a larger public audience whose image of the legal system is more abstract. However, the ideas outlined apply to presentations about the legal system directed at the general public audience. Messages by court leaders should acknowledge people's right to use the courts. Knowing that there is somewhere to go if citizens have problems is an important part of living in a democracy.

Courts should emphasize their position as neutral authorities whose role is to interpret and apply the law. The belief that courts make decisions based upon the neutral application of principles to the facts of particular cases is central to the legitimacy of the courts. Public messages should be oriented toward the role of the courts in helping people to deal with their problems. People must believe that the courts are a place that people can go for justice, where judges care about the concerns of citizens, listen to their grievances, and apply the law to solve the real problems people face.

### Footnotes

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- a1 Tom R. **Tyler** is a University Professor at New York University. He teaches in the psychology department and the law school. His research explores the dynamics of authority in groups, organizations, and societies. In particular, he examines how judgments about the justice or injustice of group procedures shape legitimacy, compliance, and cooperation.
- 1 Tom R. **Tyler**, [Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform](#), 45 *Am. J. Comp. L.* 871 (1997) (examining individuals' evaluations of their personal experiences with the legal system).
- 2 For a review of early research on procedural justice, see E. Allan Lind & Tom R. **Tyler**, *The Social Psychology of Procedural Justice* (1988). For a review of more recent studies, see Tom R. **Tyler**, *Social Justice: Outcome and Procedure*, 35 *Int'l J. Psychol.* 117 (2000) [hereinafter **Tyler**, *Social Justice*].
- 3 Tom R. **Tyler** & Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (2002).
- 4 Tom R. **Tyler**, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, in 30 *Crime and Justice: A Review of Research* 283 (Michael Tonry ed., 2003) [hereinafter **Tyler**, *Procedural Justice*].
- 5 **Tyler**, *Social Justice*, supra note 2 (reviewing these studies).
- 6 David B. Rottman, *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys* (Sept. 2005), available at [http://www.courtinfo.ca.gov/reference/documents/4\\_37pubtrust1.pdf](http://www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf) (sampling over 2400 people chosen randomly from across the country and suggesting that the key issue shaping public evaluations of the **courts** is their views regarding the fairness of **court** procedures).
- 7 *Id.* at 6.
- 8 Tom R. **Tyler** & E. Allan Lind, *A Relational Model of Authority in Groups*, in 25 *Advances in Experimental Social Psychology* 115 (Mark P. Zanna ed., 1992).
- 9 *Id.* at 138-39.
- 10 *Id.* at 139-43.
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 **Tyler** & Lind, supra note 8, at 139-43.
- 15 *Id.* at 134-35.
- 16 **Tyler**, *Social Justice*, supra note 2, at 119-20; see, e.g., Tom R. **Tyler**, Lawrence W. Sherman, Heather Strang, Geoffrey C. Barnes & Daniel J. Woods, *Reintegrative Shaming, Procedural Justice and Recidivism: The Engagement of Offenders' Psychological Mechanisms in the Canberra RISE Drinking-and-Driving Experiment*, 41 *Law & Soc'y Rev.* (forthcoming 2007) (showing that those adults who experience a fairer judicial procedure after being arrested for driving while drunk are significantly more likely to obey the law several years after their offense).
- 17 **Tyler**, *Procedural Justice*, supra note 4.
- 18 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).
- 19 Tom R. **Tyler**, [Governing Amid Diversity: The Effect of Fair Decisionmaking Procedures on the Legitimacy of Government](#), 28 *Law & Soc'y Rev.* 809 (1994).

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- 20 **Tyler**, Procedural Justice, *supra* note 4.
- 21 **Tyler** & Huo, *supra* note 3.
- 22 Tom R. **Tyler**, Why People Obey the Law (1990) [hereinafter **Tyler**, Why People Obey the Law].
- 23 See generally The Rule of Law (Ian Shapiro ed., 1994); Judith N. Shklar, Political Theory and the Rule of Law, in *The Rule of Law: Ideal or Ideology 1* (Allan C. Hutchinson & Patrick Monahan eds., 1987).
- 24 It is important to acknowledge that the ideas underlying the rule of law are broad and only some are considered here. For example, the idea of democratically elected leaders is a given element in American society and underlies the legitimacy of the legal and political systems. Similarly, checks and balances among the branches of government are critical to democracy. These structural elements are central to the effective rule of law, but will not be considered here.
- 25 Harry W. Jones, *The Rule of Law and the Welfare State*, 58 *Colum. L. Rev.* 143, 145-46 (1958). The government needs to treat all persons equally, making decisions without regard for race, religion, gender, or minority status. Decisions need to be made based upon clearly defined laws and by people of integrity, acting on legal principles.
- 26 The government is bound to act in accord with the law and to uphold the rights of the people. See generally R.C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (1995) (discussing the legal rights area concept central to Western democratic governments); Thomas Carothers, *The Rule of Law Revival*, 77 *Foreign Aff.* 95 (1998).
- 27 It is also important to respect every person's dignity and humanity. It has been recognized that adherence to rules is not enough, since rules may themselves be inconsistent with principles of decency and justice. Hence, the content of rules must be evaluated for consistency with ideas of human rights. See generally Blandine Kriegel, *The State and the Rule of Law* (Marc A. LePain & Jeffery C. Cohen trans., 1995).
- 28 See, e.g., John Thibaut & Laurens Walker, *Procedural Justice: A Psychological Analysis* (1975).
- 29 Rottman, *supra* note 6, at 9.
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 **Tyler** & Huo, *supra* note 3, at 28-45. The study was designed to include approximately equal numbers of White, African-American, and Hispanic respondents. To achieve this goal, the study oversampled the areas of the cities involved known to have higher proportions of minorities. *Id.* at 29-31 (detailing the sampling approach).
- 34 *Id.* at 30. Interviewers reached a sample of the population of the two cities by telephone. However, only those with recent personal experience were interviewed, so those interviewed do not reflect the larger population that was sampled. The demographics of those with recent personal experience with legal authorities may not match the demographics of the general population.
- 35 *Id.*
- 36 *Id.* at 33.
- 37 Some people dealt with more than one authority. In that case, they were asked to think about the person they felt was most important in shaping their experience.
- 38 I selected four items to measure deference: (1) "I willingly accepted the decision"; (2) "In a similar situation in the future, I would like to see the situation handled in the same way"; (3) "I considered going to someone else to try to change the decision"; and (4) "The situation could have been handled better." **Tyler** & Huo, *supra* note 3, at 44.

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- 39 I selected two items to measure satisfaction with the authority: (1) “The person generally did a good job dealing with my situation” and (2) “I was generally satisfied with the way he/she handled the situation.” Id.
- 40 The questionnaire upon which the analysis in *Trust in the Law* is based is available from the author. I selected three items to measure views about the authority: How much do you “respect,” “like,” and “fear” the authority.
- 41 **Tyler** & Huo, *supra* note 3, at 49-96 (discussing an overall model of the antecedents of decision acceptance during personal experiences with legal authorities).
- 42 I selected five items to measure trust: (1) The authority “considered my views”; (2) The authority “tried to do the right thing by me”; (3) The authority “tried to take my needs into account”; (4) The authority “cared about my concerns”; and (5) The authority “is someone I trust.” Id. at 68.
- 43 Decision favorability was measured by combining observer ratings of the valence of the decision with self-reports indicating whether those involved experienced the outcome as favorable or unfavorable. Id. at 37-42.
- 44 Respondents were asked whether the decision was better or worse than they deserved according to principles of distributive justice. Id. at 52-57.
- 45 I used regression analysis to test the influence of procedural justice, trust, and other factors on deference. In such an analysis, a set of factors (independent variables) are used to explain differences among those in the study on some target (dependent) variable. If the independent variables completely explained differences on the dependent variable, they would explain 100% of the variance, while 0% would indicate that they explained nothing. Within the overall analysis, the influence of each independent variable can be compared by looking at its relative beta weight (standardized regression coefficients). This reflects the relative influence of different factors. So, for example, a beta weight of 0.30 is twice as large as a beta weight of 0.15. In addition, the analysis tests the likelihood that an effect is statistically significant. The higher the coefficient, the less likely it is that it would be produced by chance if, in fact, there is no connection between the variables. So, when the probability of an effect is  $p < 0.05$  that means that an effect of that size would be generated less than 5 in 100 times if the two variables are unrelated. The statement  $p < 0.01$  means that an effect of that size would be generated less than 1 in 100 times if the two variables are unrelated, and  $p < 0.001$  means less than 1 in 1000 times. If an effect is found that is highly unlikely to have occurred by chance if two variables are truly not related, we say that there is strong evidence that they are significantly related in statistical terms.
- 46 The results were computed by the author using the data set described. Details of the analysis are available from the author.
- 47 A regression equation including all four factors indicates significant influences of procedural justice (beta = 0.33,  $p < 0.001$ ); trust (beta = 0.50,  $p < 0.001$ ); and distributive justice (beta = 0.22,  $p < 0.001$ ). Outcome favorability had no significant influence.
- 48 A regression equation including all four factors indicates significant influences of procedural justice (beta = 0.26,  $p < 0.001$ ); trust (beta = 0.61,  $p < 0.001$ ); distributive justice (beta = 0.08,  $p < 0.001$ ); and outcome favorability (beta = 0.07,  $p < 0.001$ ).
- 49 These findings are not identical to ours because this analysis employs a narrower definition of procedural justice than we used. **Tyler** & Huo, *supra* note 3, at 49-96. In this analysis, procedural justice focuses directly upon issues of decisionmaking, and does not consider issues of interpersonal treatment, which we examined in our previous study. Id.; see also **Tyler** & Lind, *supra* note 8 (discussing the importance of interpersonal treatment).
- 50 Tom R. **Tyler** & Peter DeGoey, *Trust in Organizational Authorities: The Influence of Motive Attributions on Willingness to Accept Decisions*, in *Trust in Organizations: Frontiers of Theory and Research* 331 (Roderick M. Kramer & Tom R. **Tyler** eds., 1996).
- 51 I selected five items to measure neutrality: (1) “How fair are the procedures he/she used to make decisions about how to handle the situation?”; (2) “I had an opportunity to describe my situation before he/she made a decision about how to handle it?”; (3) The authority “made decisions based on the facts”; (4) The authority “treated me the same as he/she

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would treat anyone else in the same situation”; and (5) “I understood why I was treated as I was.” Tyler & Huo, supra note 3, at 54, 83, 85, 152.

52 Two items were used to measure respect for rights: (1) “According to the law, I received the outcome I deserved” and (2) The authority “showed concern for my rights.” Id. at 54, 83.

53 Three items were used to measure respect for persons: (1) “Overall, how fairly are you treated?”; (2) The authority “treated me politely”; and (3) The authority “treated me with dignity and respect.” Id. at 83, 149.

54 In a regression analysis all the terms included are studied at one time. The analysis reports beta weights, which reflect the degree of influence of one factor, while removing the influence of other factors. Beta weights are standardized, which means that their relative size reflects their relative strength of influence. Each coefficient is tested to see if the amount of influence for that factor is significantly different than no influence (zero). Only coefficients found to be significantly different from zero are included here. If coefficients are not significant, they are presented as reflecting no influence.

55 Beta = 0.49,  $p < 0.001$ .

56 Beta = 0.17,  $p < 0.001$ .

57 Beta = 0.25,  $p < 0.001$ .

58 Beta = -0.02, not significant.

59 Beta = 0.01, not significant.

60 Beta = 0.45,  $p < 0.001$ .

61 Beta = 0.18,  $p < 0.001$ .

62 Beta = 0.25,  $p < 0.001$ .

63 Beta = 0.09,  $p < 0.001$  for outcome favorability; beta = -0.01, not significant for outcome fairness.

64 Beta = 0.27,  $p < 0.001$ .

65 Beta = 0.54,  $p < 0.001$ .

66 Beta = 0.24,  $p < 0.001$ .

67 Beta = 0.04, not significant for outcome favorability; beta = 0.14,  $p < 0.001$  for outcome fairness.

68 Beta = 0.37,  $p < 0.001$ .

69 Beta = 0.25,  $p < 0.001$ .

70 Beta = 0.34,  $p < 0.001$ .

71 Beta = 0.05,  $p < 0.01$  for outcome favorability; beta = -0.01, not significant for outcome fairness.

72 Beta = 0.42,  $p < 0.001$ .

73 Beta = 0.27,  $p < 0.001$ .

74 Beta = 0.20,  $p < 0.001$ .

75 Beta = 0.13,  $p < 0.001$  for outcome fairness; beta = -0.05, not significant for outcome favorability.

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76 Beta = 0.39,  $p < 0.001$ .

77 Beta = 0.20,  $p < 0.001$ .

78 Beta = 0.32,  $p < 0.001$ .

79 Beta = 0.09,  $p < 0.001$ .

80 Beta = 0.04,  $p < 0.01$ .

81 See **Tyler** & Huo, *supra* note 3, at 76-96.

82 Jason Sunshine & Tom R. **Tyler**, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 *Law & Soc'y Rev.* 513 (2003).

83 **Tyler**, *Why People Obey the Law*, *supra* note 22.

84 I selected nineteen items to measure legitimacy: (1) "Overall, the NYPD is a legitimate authority and people should obey the decisions that NYPD officers make"; (2) "I have confidence that the NYPD can do its job well"; (3) "I trust the leaders of the NYPD to make decisions that are good for everyone in the city"; (4) "You should accept the decisions made by police, even if you think they are wrong"; (5) "You should do what the police tell you to do even when you do not understand the reasons for their decisions"; (6) "You should do what the police tell you to do, even when you disagree with their decisions"; (7) "You should do what the police tell you to do even when you do not like the way they treat you"; (8) "There are times when it is ok for you to ignore what the police tell you"; (9) "Sometimes you have to bend the law for things to come out right"; (10) "The law represents the values of the people in power, rather than the values of people like you"; (11) "People in power use the law to try to control people like you"; (12) "The law does not protect your interests"; (13) "The police care about the well-being of everyone they deal with"; (14) "People's basic rights are well protected by the police"; (15) "The police are often dishonest"; (16) "Some of the things the police do embarrass our city"; (17) "There are many things about the NYPD and its policies that need to be changed"; (18) "I am proud of the work of the NYPD"; and (19) "I agree with many of the values that define what the NYPD stands for." Sunshine & **Tyler**, *supra* note 82, app. B at 543.

85 Respondents were asked how frequently they complied with seven everyday laws. *Id.* app. B at 544.

86 Respondents were asked about their willingness to help the police by reporting crime and criminals. *Id.*

87 I selected one question: Do the police "make decisions about how to handle problems in fair ways?" *Id.* app. B at 542.

88 I selected two items: (1) Whether the police "take account of people's needs and concerns?" and (2) Whether the police "consider people's opinions when deciding what to do?" *Id.* app. B at 543.

89 I selected three items: (1) "How effective are the police in fighting crime in your neighborhood?"; (2) "When people call the police for help, how quickly do they respond?"; and (3) "How effective are the police at helping people who ask for help?" *Id.* app. B at 544.

90 I selected four items: (1) "How safe is your neighborhood during the day?"; (2) "How safe is your neighborhood in the evening?"; (3) "How much do you worry about your home being burglarized?"; and (4) "How much do you worry about being robbed, assaulted, or mugged on the street?" Sunshine & **Tyler**, *supra* note 81, app. B at 544.

91 I selected eight items: In your neighborhood: (1) "How often do you see garbage in the streets?"; (2) "How often do you see empty beer bottles on the streets?"; (3) "How often do you see graffiti on the walls?"; (4) "How often do you see gangs hanging out on the streets?"; (5) "How often do you see people buying beer, wine, or liquor on the street?"; (6) "How often do you see people buying or selling drugs on the street?"; (7) "How high is the crime rate in your neighborhood?"; and (8) "In the past year, has the crime rate been increasing?" *Id.*

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- 92 Respondents were asked how likely it is that they would be caught and punished for committing seven everyday crimes.
- 93 Beta = 0.31,  $p < 0.001$ .
- 94 Beta = 0.11,  $p < 0.001$ .
- 95 Beta = 0.08,  $p < 0.05$ .
- 96 Beta = 0.09,  $p < 0.01$ .
- 97 Beta = 0.13,  $p < 0.001$ .
- 98 I selected four items: (1) The police “make their decisions based upon facts, not their personal biases or opinions”; (2) The police “try to get the facts in a situation before deciding how to act”; (3) The police “apply the rules consistently to different people”; and (4) The police “consider the views of the people involved when deciding what to do.” Sunshine & Tyler, supra note 82, app. B at 546.
- 99 I selected two items: (1) The police “respect people's rights” and (2) The police “usually accurately understand and apply the law.” Id. app. B at 546-47.
- 100 I selected two items: (1) The police “treat people fairly” and (2) The police “treat people with dignity and respect.” Id.
- 101 Do the police distribute police services fairly across demographic groups? Eight groups were mentioned, including Hispanics, African-Americans, the poor, and the wealthy. Id. app. B at 545.
- 102 The question was, “Do the police distribute police services fairly to people like you?” (questionnaire on file with author).
- 103 Beta = 0.51,  $p < 0.001$ .
- 104 Beta = 0.07,  $p < 0.10$ .
- 105 Beta = 0.06,  $p < 0.05$ .
- 106 Beta = 0.06,  $p < 0.05$ .
- 107 Beta = 0.36,  $p < 0.001$ .
- 108 Beta = 0.26,  $p < 0.001$ .
- 109 Beta = 0.19,  $p < 0.001$ .
- 110 Beta = 0.08,  $p < 0.001$ .
- 111 Beta = 0.19,  $p < 0.001$ .
- 112 Beta = 0.15,  $p < 0.001$ .
- 113 Beta = 0.10,  $p < 0.001$ .
- 114 Beta = 0.06,  $p < 0.05$ .
- 115 Beta = 0.17,  $p < 0.001$ .
- 116 The greater influence of trust relative to procedural justice reported here seems inconsistent with the more central role that procedural justice plays in other studies. See, e.g., Tyler & Huo, supra note 3, at 49-96. The reason for the difference is that in most studies, procedural justice includes both quality of decisionmaking and quality of overall

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interpersonal treatment. In this study only quality of decisionmaking is considered, lowering the impact of procedural justice evaluations.

- 117 Tom R. **Tyler** & Gregory Mitchell, [Legitimacy and the Empowerment of Discretionary Legal Authority: The United States Supreme Court and Abortion Rights](#), 43 *Duke L.J.* 703 (1994).
- 118 *Id.* at 712.
- 119 I selected two questions: (1) “Some people feel that we should get rid of the U.S. Supreme Court, while others are opposed to the idea. How do you feel?” and (2) “Some people feel that if the U.S. Supreme Court were to continually make decisions that most people disagree with, we should do away with the Court altogether.” *Id.* app. B at 803-04.
- 120 I selected two questions: (1) “Overall, the way the Supreme Court makes its decisions is fair” and (2) “The way the U.S. Supreme Court decides whether laws are constitutional is fair.” *Id.* app. B at 808.
- 121 I selected four items: (1) “The U.S. Supreme Court can usually be trusted to make decisions that are right for the country as a whole”; (2) “How often are the decisions made by the Supreme Court fair?”; (3) “The Supreme Court tries to be fair when making its decisions”; and (4) “The Supreme Court justices are generally honest--giving the real reasons for their decisions.” *Id.* app. B at 803, 811-12.
- 122 Respondents were asked, “How often do you agree with the decisions that the Supreme Court makes?” *Id.* app. B at 808.
- 123 Beta = 0.30,  $p < 0.001$ .
- 124 Beta = 0.12,  $p < 0.05$ .
- 125 Beta = 0.11,  $p < 0.05$ ; overall, 20% of the variance in deference was explained.
- 126 Respondents were asked two questions: (1) “The Supreme Court gives equal consideration to the views of all of the different groups in America” and (2) “The Supreme Court gets the kind of information it needs to make informed decisions.” **Tyler** & Mitchell, *supra* note 117, app. B at 811.
- 127 Two items were used: (1) “Our basic rights are well protected by the U.S. Supreme Court” and (2) “The Supreme Court is concerned about protecting the average citizen's rights.” *Id.* app. B at 803, 812.
- 128 Beta = 0.43,  $p < 0.001$ .
- 129 Beta = 0.17,  $p < 0.001$ .
- 130 Beta = 0.13,  $p < 0.01$ ; overall, 40% of the variance was explained.
- 131 Beta = 0.46,  $p < 0.001$ .
- 132 Beta = 0.30,  $p < 0.001$ .
- 133 Beta = 0.17,  $p < 0.001$ ; overall, 63% of the variance was explained.
- 134 Beta = 0.26,  $p < 0.001$ .
- 135 Beta = 0.14,  $p < 0.01$ ; overall, 16% of the variance was explained.
- 136 Thibaut & Walker, *supra* note 28.
- 137 Tom R. **Tyler** & Peter DeGoey, *Collective Restraint in Social Dilemmas: Procedural Justice and Social Identification Effects on Support for Authorities*, 69 *J. Personality & Soc. Psychol.* 482, 485 (1995).
- 138 *Id.*

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- 139 Beta = 0.16,  $p < 0.01$ .
- 140 Beta = 0.03, not significant.
- 141 Beta = 0.08, not significant; overall, 4% of the variance was explained.
- 142 Beta = 0.41,  $p < 0.001$ .
- 143 Beta = 0.00, not significant.
- 144 Beta = 0.06, not significant; overall, 18% of the variance was explained.
- 145 Beta = 0.18,  $p < 0.01$ .
- 146 Beta = 0.01, not significant.
- 147 Beta = 0.10, not significant.
- 148 Overall, 4% of the variance was explained.
- 149 Beta = 0.22,  $p < 0.001$ .
- 150 Beta = 0.13,  $p < 0.05$ .
- 151 Beta = 0.09, not significant; overall, 10% of the variance was explained.
- 152 I selected two questions: (1) “The commission would get the information it needed to make good decisions” and (2) “The commission would give you plenty of opportunity to make your arguments and be heard.” Tyler & DeGoey, *supra* note 136, at 486.
- 153 I selected one question: “The commission would respect your rights as a citizen.” *Id.*
- 154 I selected two questions: (1) “The commission would treat you politely” and (2) “The commission would treat you fairly.” *Id.*
- 155 Beta = 0.16,  $p < 0.05$ .
- 156 Beta = 0.14,  $p < 0.05$ .
- 157 Beta = 0.20,  $p < 0.001$ ; overall, 20% of the variance was explained, 17% by the indices of the rule of law.
- 158 Beta = 0.39,  $p < 0.001$ .
- 159 Beta = 0.28,  $p < 0.001$ .
- 160 Beta = 0.11,  $p < 0.001$ ; overall, 48% of the variance was explained, 48% by the indices of the rule of law.
- 161 Beta = 0.14,  $p < 0.05$ .
- 162 Beta = 0.10,  $p < 0.05$ .
- 163 Only 2% of the variance was explained, 1% by the indices of the rule of law.
- 164 Beta = 0.24,  $p < 0.001$ .
- 165 Beta = 0.13,  $p < 0.05$ ; 7% of the variance was explained, 5% by the indices of the rule of law.

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- 166 Beta = 0.17,  $p < 0.01$ .
- 167 Beta = 0.17,  $p < 0.01$ ; 6% of the variance was explained, 3% by the indices of the rule of law.
- 168 Harris Sondak & Tom R. Tyler, How Does Procedural Justice Shape the Desirability of Markets? (May 19, 2005) (unpublished manuscript) (on file with author).
- 169 Id. at 5.
- 170 Id. at 6. The design of the study involved random allocation of respondents to the community or work condition. However, those respondents assigned to the work condition were screened for working at least half-time. If the respondents did not meet these conditions, they were assigned to the community condition. Hence, more people ended up in the community condition than in the work condition. Id. at 7.
- 171 Id. at 6.
- 172 Id. Every respondent rated market solutions and one of eight other solutions. The only one of the eight nonmarket solutions discussed here is having an authority make the decision. Hence, the number of people rating that solution is lower than the number rating the market solution. The means presented are only for that subset of respondents who compared markets to the use of authorities.
- 173 I selected one question: "How fair do you think this procedure is for resolving this issue?" Sondak & Tyler, supra note 168, at 7.
- 174 I selected one question: "How much do you trust this procedure to lead to a decision that takes account of your needs and concerns?" Id. at 7-8.
- 175 I selected one question: "How likely is it that you would get the outcome you wanted using this procedure?" Id. at 8.
- 176 People also varied in their willingness to accept market solutions, but the factors shaping the acceptability of markets are not considered here. Id. at 8-10.
- 177 Because people are choosing a procedure that will be used to make an allocation in the future, there is no outcome. People were asked about the outcome they expected to receive if a particular allocation procedure was used to make the decision.
- 178 Beta = 0.39,  $p < 0.001$ .
- 179 Beta = 0.12,  $p < 0.001$ .
- 180 Beta = 0.38,  $p < 0.001$ . Studies typically find that when people are asked to choose procedures that will occur in the future, they give greater weight to anticipated outcome favorability than they do when they are evaluating procedures after they have experienced them. After people have been in a procedure, procedural aspects of their experience dominate their evaluations, and the outcome of the procedure becomes relatively less important. See Tom R. Tyler, Yuen J. Huo & E. Allan Lind, *The Two Psychologies of Conflict Resolution: Differing Antecedents of Pre-experience Choices and Post-experience Evaluations*, 2 *Group Processes & Intergroup Rel.* 99, 114 (1999).
- 181 Beta = 0.58,  $p < 0.001$ .
- 182 Beta = 0.27,  $p < 0.001$ .
- 183 I selected one question: "How likely is it that relevant issues would be discussed and relevant facts considered?" Sondak & Tyler, supra note 168, at 7.
- 184 I selected one question: "How likely is it that your rights would be respected?" Id. at 8.

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- 185 I selected one question: “How likely is it that the problem would be resolved in a dignified way that treated everyone with respect?” Id.
- 186 Beta = 0.32,  $p < 0.001$ .
- 187 Beta = 0.17,  $p < 0.001$ .
- 188 Beta = 0.37,  $p < 0.001$ ; overall, 61% of the variance was explained.
- 189 Beta = 0.24,  $p < 0.001$ .
- 190 Beta = 0.34,  $p < 0.001$ .
- 191 Beta = 0.09,  $p < 0.01$ .
- 192 Beta = 0.23,  $p < 0.001$ ; overall, 60% of the variance was explained.
- 193 Beta = 0.23,  $p < 0.001$ .
- 194 Beta = 0.38,  $p < 0.001$ .
- 195 Beta = 0.09,  $p < 0.001$ .
- 196 Beta = 0.23,  $p < 0.001$ ; overall, 65% of the variance was explained.
- 197 Beta = 0.25,  $p < 0.001$ .
- 198 Beta = 0.37,  $p < 0.001$ .
- 199 Beta = 0.09,  $p < 0.05$ .
- 200 Beta = 0.33,  $p < 0.001$ ; overall, 55% of the variance was explained.
- 201 Beta = 0.15,  $p < 0.001$ .
- 202 Beta = 0.12,  $p < 0.001$ .
- 203 Beta = 0.10,  $p < 0.001$ .
- 204 Beta = 0.51,  $p < 0.001$ ; overall, 60% of the variance was explained.
- 205 Beta = 0.25,  $p < 0.001$ .
- 206 Beta = 0.22,  $p < 0.001$ .
- 207 Beta = 0.36,  $p < 0.001$ ; overall, 56% of the variance was explained.
- 208 These data are from an unpublished study; they are on file with the author.
- 209 People often prefer to allocate resources equally because it does not require an authority to make discretionary decisions about merit or need. David M. Messick & Terry Schell, Evidence for an Equality Heuristic in Social Decision Making, 80 *Acta Psychologica* 311 (1992) (arguing that using equality as a decision rule is preferred in situations in which people do not want to distinguish among people).
- 210 David B. Rottman & Alan J. Tomkins, Public **Trust** and Confidence in the **Courts**: What Public Opinion Surveys Mean to Judges, 36 *Ct. Rev.*, Fall 1999, at 24, 24.

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- 211 See generally Margaret Levi & Laura Stoker, Political Trust and Trustworthiness, 3 Ann. Rev. Pol. Sci. 475 (2000). Interestingly, these authors suggest that “despite all the verbiage decrying the decline in trust, there is little actual evidence of a long-term secular decline, either in the United States or in Western Europe.” Id. at 483. In particular, trust has moved both up and down since the mid 1970s in the United States.
- 212 Gary LaFree, Losing Legitimacy: Street Crime and the Decline of Social Institutions in America 100-04 (1998).
- 213 See Seymour Martin Lipset & William Schneider, The Confidence Gap: Business, Labor, and Government in the Public Mind 60 (1983) (reporting the results of a survey about trust in institutions including the Church, the Armed Forces, and the Legal Profession).
- 214 Bureau of Justice Statistics, U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics Online (2005), <http://www.albany.edu/sourcebook>.
- 215 The percentage of respondents indicating that the police have high levels of ethics ranged from 37% in 1977 to 59% in 2003. Id. tbl.2.20.2005, <http://www.albany.edu/sourcebook/pdf/t2202005.pdf>.
- 216 The percentage of respondents indicating high levels of confidence in the police ranged from 52% in 1993 to 64% in 2004. Id. tbl.2.10.2005, <http://www.albany.edu/sourcebook/pdf/t2102005.pdf>.
- 217 Results indicate that 17% had confidence in 1993 and 34% had confidence in 2004. Id. When asked whether the local courts sentenced criminals severely enough, the results ranged from 9% saying yes in 1985 to 18% in 2002. Id. tbl.2.47.2005, <http://www.albany.edu/sourcebook/pdf/t2472005.pdf>.
- 218 When asked whether they have a great deal of confidence in the Court, the percentage has remained consistent, 45% agreed in 1979 and similarly 46% agreed in 2004. Id. tbl.2.10.2005, <http://www.albany.edu/sourcebook/pdf/t2102005.pdf>.
- 219 Tom R. Tyler, [Public Mistrust of the Law: A Political Perspective](#), 66 U. Cin. L. Rev. 847 (1998) (addressing this issue using public opinion poll data). Data suggest that, while trust and confidence are low, people have a strong sense that they should obey legal rules and the decisions of legal authorities. Thus, “people can feel dissatisfaction about the operation of legal institutions and the actions of legal authorities without losing their feelings of obligation to obey the law.” Id. at 865; accord Tom R. Tyler, [A Deference-Based Perspective on Duty: Empowering Government to Define Duties to Oneself and to Others](#), in *The Psychology of Rights and Duties: Empirical Contributions and Normative Commentaries* 137 (Norman J. Finkel & Fathali M. Moghaddam eds., 2005).
- 220 See, e.g., Levi & Stoker, *supra* note 210.

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