

Tulsa Law Review

Volume 54 | Number 1

Fall 2018

Human-Centered Civil Justice Design: Procedural Justice and Process Value Pluarlism

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HUMAN-CENTERED CIVIL JUSTICE DESIGN: PROCEDURAL JUSTICE AND PROCESS VALUE PLURALISM

Victor D. Quintanilla* & Michael A. Yontz**

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INTRODUCTION

The article *Human-Centered Civil Justice Design*¹ introduced a novel approach to improve the civil justice system. Human-centered civil justice design reflects best practices in problem solving² and begins with empathizing with intended beneficiaries and stakeholders, using surveys, observations, and interviews to immerse designers in the experiences of these stakeholders. Human-centered designers consider the needs and goals of stakeholders and harness psychological and behavioral science to ideate and prototype possible solutions, which the designers empirically test with pilots and randomized control trials. Moreover, human-centered civil justice designers seek to reconcile the diverse process values that the civil justice system seeks to promote. *Human-Centered Civil Justice Design* theorized that procedural justice has a plural effect on the public's experiences of the civil justice system and that procedural justice can be harnessed to advance the plural process values that human-centered civil justice designers seek to realize. In this Article, we present the results of an empirical legal study designed to test that hypothesis.

Our civil justice system seeks to advance plural process values.³ When evaluating the fairness of our civil justice system writ large, and its particular rules, some draw on utilitarianism to argue that the civil justice system aims for deterrence and that litigation is the instrument for influencing or constraining behavior to advance society's substantive policies.⁴ Others argue that our civil justice system seeks to vindicate rights and effectuate

1. Victor D. Quintanilla, *Human-Centered Civil Justice Design*, 121 PA. ST. L. REV. 745 (2017).

2. *Id.* at 775–83; PAUL BREST, NADIA ROUMANI & JASON BADE, PROBLEM SOLVING, HUMAN-CENTERED, AND STRATEGIC PROCESSES 4 (2015).

3. *See* Quintanilla, *supra* note 1, at 763–69.

4. *See, e.g.*, Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 176–77 (1968). *But see* Joanna C. Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking*, 57 UCLA L. REV. 1023, 1024–31 (2009).

values and that litigation is a means through which persons are enabled to obtain, or to receive assurance of obtaining, the rights that society provides.⁵ Some draw on the normative theory of welfare economics to argue that our civil justice system seeks to advance efficiency.⁶ And still others, drawing on a Kantian ideal of respect for persons or accounts of democratic legitimacy, argue that the civil justice system seeks to advance the twin pillars of participation and respect for human dignity.⁷ Thus, our courts are an important means by which persons participate, “or have their wills ‘counted’, in societal decisions they care about,” and courts address the loss of dignity that persons suffer when denied an opportunity to address their grievances.⁸

Accordingly, a perspective that embraces these plural values advanced by the civil justice system better accords with the actual administration of civil justice.⁹ Moreover, the civil justice system seeks to promote diverse experiences of justice, including fairness, outcome satisfaction, positive emotions, perceptions of accuracy, perceptions of effectiveness, and perceived legitimacy.¹⁰ A legal culture that embraces plural values would not only tolerate these diverse experiences, but would facilitate engagement on how to reconcile these diverse experiences with the plural process values that civil justice promotes, thereby achieving a more flexible, effective, and ultimately *just* civil justice system.¹¹

Procedural justice researchers have demonstrated that, when the public experiences procedural injustice, the perceived legitimacy of the civil justice system erodes, whereas when the public experiences procedural justice, perceptions of legitimacy are fostered.¹² Decades of research reveal that procedural justice powerfully influences compliance with

5. See Frank I. Michelman, *The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights. Part I*, 1973 DUKE L. J. 1153, 1171–77 (1974). See also Judith Resnik, *Fairness in Numbers: A Comment on AT&T v. Conception, Wal-Mart v. Dukes, and Turner v. Rogers*, 125 HARV. L. REV. 78, 113–18 (2011); Michael J. Saks, *Do We Really Know Anything About the Behavior of the Tort Litigation System And Why Not?*, 140 U. PA. L. REV. 1147, 1217–25 (1992).

6. See e.g., LOUIS KAPLOW & STEVEN SHAVELL, *FAIRNESS VERSUS WELFARE* 5 (2002); RICHARD POSNER, *ECONOMIC ANALYSIS OF LAW* (5th ed. 1998); Richard A. Posner, *Economic Approach to Legal Procedure and Judicial Administration*, 2 J. LEGAL STUD. 399 (1973) (hereinafter “Posner, Economic Approach to Legal Procedure”).

7. See Michelman, *supra* note 5, at 1172–75; see, e.g., Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28 (1976); ROBERT M. COVER & OWEN M. FISS, *THE STRUCTURE OF PROCEDURE* 2–38 (1979).

8. Michelman, *supra* note 5, at 1172; see, e.g., Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28 (1976); Michelman, *supra* note 5, at 1173–75; ROBERT M. COVER & OWEN M. FISS, *THE STRUCTURE OF PROCEDURE* 2–38 (1979); Judith Resnik, *The Privatization of Process: Requiem for and Celebration of the Federal Rules of Civil Procedure at 75*, 162 U. PA. L. REV. 1793, 1822–25 (2014).

9. See Quintanilla, *supra* note 1, at 763–72, 790–99.

10. *Id.* at 772–89, 790–99.

11. *Id.* at 790–99.

12. *Id.* at 772–75; Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANNU. REV. OF PSYCHOL. 375, 379–80 (2006); Kristina Murphy, Tom R. Tyler & Amy Curtis, *Nurturing Regulatory Compliance: Is Procedural Justice Effective When People Question the Legitimacy of the Law?*, 3 REG. & GOVERNANCE 1, 2–5 (2009).

legal decrees,¹³ cooperation with legal authorities,¹⁴ and engagement in other pro-social,¹⁵ participatory,¹⁶ and democratic behaviors.¹⁷ Given the plural effects and consequences of this social-psychological phenomenon for promoting a vibrant American democracy,¹⁸ the public's experiences of procedural justice must be heeded when evaluating the civil justice system's operations and dynamics.

To be sure, tension may exist between efficient justice and procedural justice. Acknowledging this tension, however, leads to greater precision when engaging in civil justice system design. For example, if litigation-related cost savings are sought, by whom? Are those who receive the benefit of savings the same or different from those who bear the burden and cost of diminished procedural justice?

This Article empirically investigates the plural effects of procedural justice and reports the results of an experiment conducted with a sample of the American public.¹⁹ The experiment examines the extent to which procedural justice has a plural effect on the public's thoughts, feelings, and experiences with civil justice. Specifically, does granting the public procedural justice broadly influence a range of experiences, including: fairness, outcome satisfaction, positive and negative emotions, perceptions of legal accuracy, perceptions of the effectiveness of procedures, and perceived legitimacy, regardless of the outcome obtained? If so, do these plural effects converge on a single underlying factor—specifically, fundamental experiences of justice?²⁰

While foundational to theories of civil justice, this Article is the first to examine these questions in the legal domain using psychological experiments. By drawing on theory in the field of social psychology and conducting an experiment with the American public, we begin to illuminate answers to these questions and discuss implications for theorizing about the extent to which legal culture and legal institutions should embrace plural process values.

The remainder of the Article proceeds as follows. Part I presents literature on different process values and procedural justice. Part II describes our psychological experiment, which investigates the plural effects of procedural justice, and then reports its major findings. Part III discusses the implications of this research on process values, and its implications for judges and court administrators.

13. See Quintanilla, *supra* note 1, at 772–75; TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990).

14. See Quintanilla, *supra* note 1, at 772–75; see, e.g., Betsy Stanko et al., *A Golden Thread, a Presence Amongst Uniforms, and a Good Deal of Data: Studying Public Confidence in the London Metropolitan Police*, 22 *POLICING & SOC'Y* 317, 318–320 (2012); Tom R. Tyler et al., *Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans*, 44 *LAW & SOC'Y REV.* 365, 365–74 (2010).

15. See Quintanilla, *supra* note 1, at 772–75; see, e.g., David De Cremer & Daan Van Knippenberg, *How do Leaders Promote Cooperation? The Effects of Charisma and Procedural Fairness*, 87 *J. APPLIED PSYCHOL.* 858, 858–60 (2002).

16. See Quintanilla, *supra* note 1, at 772–75; see, e.g., David De Cremer & Tom R. Tyler, *Managing Group Behavior: The Interplay Between Procedural Justice, Sense of Self, and Cooperation*, 37 *ADVANCES EXPERIMENTAL SOC. PSYCHOL.* 151, 185–93 (2005).

17. See Quintanilla, *supra* note 1, at 772–75; see, e.g., E. A. LIND, & T. R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE*. (N.Y. Plenum. 1988); Donna Shestowsky, *The Psychology of Procedural Preference: How Litigants Evaluate Legal Procedures Ex Ante*, 99 *IOWA L. REV.* 637, 643–44 (2014).

18. See Quintanilla, *supra* note 1, at 783–89; see, e.g., Tyler, *supra* note 13, at 375–400.

19. See Quintanilla, *supra* note 1, at 775–89.

20. *Id.*

I. PLURAL PROCESS VALUES

Human-centered civil justice design respects the plural process values that the civil justice system seeks to sustain. This section collects a taxonomy of these different process values. Frank Michelman, in his seminal article, *The Supreme Court and Litigation Access Fees: The Right to Protect One's Rights*, describes several process values—including deterrence values, effectuation values, and dignity and participation values—described below. In addition to those values identified by Michelman, a civil justice system also seeks to promote efficiency and equal treatment of particular classes of parties. As will be described in Part IV, these plural process values have implications for a human-centered form of managerial judging.

Beginning with *deterrence values*, under the classic approach advanced by Jeremy Bentham, to deter an activity the perceived net cost of an activity must exceed the perceived net benefit.²¹ Therefore, to deter wrongful conduct, our society should harness legal procedures, including private litigation, to increase the net cost of unlawful activity as a means of ensuring that members of society conform their conduct to the law.²² From this perspective, legal procedures influence or constrain behavior in ways consistent with substantive public policies.²³ Civil processes, including private litigation, are part of a system to ensure that all members of society comply with the duties and obligations society imposes on them.

The Supreme Court has observed that the threat of litigation and liability deters misconduct.²⁴ While the threat of suit may induce public and private actors to alter unlawful conduct,²⁵ others have aptly observed that, despite its deterrent aspirations, the civil justice system often under-deters misconduct and under-enforces our laws.²⁶ This under-deterrence stems from a number of factors: The public is uninformed of rights and entitlements. Many cannot afford counsel and are unable to navigate the civil justice system *pro se*, and many are fearful of litigating against powerful public and private actors and of the retaliation that may result.²⁷ Procedural and evidentiary obstacles reduce the

21. This is the classic utilitarian approach advanced by Jeremy Bentham. See generally JEREMY BENTHAM, AN INTRODUCTION TO THE PRINCIPLES OF MORALS AND LEGISLATION (Wilfrid Harrison ed., 1967). Modern formulations have been advanced by several scholars, including Gary Becker. See Becker, *supra* note 4, at 176–77.

22. See, e.g., *Wyatt v. Cole*, 504 U.S. 158, 161 (1992); *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986); *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986); cf. Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 982 (2003).

23. See Michelman, *supra* note 5, at 1175.

24. See, e.g., *Wyatt*, 504 U.S. at 161; *Rivera*, 477 U.S. at 575; *Stachura*, 477 U.S. at 307.

25. See, e.g., Richard H. Fallon, Jr. & Daniel J. Meltzer, *New Law, Non-Retroactivity, and Constitutional Remedies*, 104 HARV. L. REV. 1731, 1787–91 (1991); Myriam E. Gilles, *In Defense of Making Government Pay: The Deterrent Effect of Constitutional Tort Remedies*, 35 GA. L. REV. 845 (2001); Pamela S. Karlan, *The Paradoxical Structure of Constitutional Litigation*, 75 FORDHAM L. REV. 1913 (2007).

26. The gap between ideal and actual practice has become especially wide in the context of forced consumer arbitration clauses that circumvent federal enactments, including federal civil rights, antitrust, and securities protections. See Resnik, *supra* note 7; *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2313 (2013) (Kagan, J., dissenting) (“[H]ere is the nutshell version of today’s opinion, admirably flaunted rather than camouflaged: Too darn bad.”).

27. See Daniel J. Meltzer, *Deterring Constitutional Violations by Law Enforcement Officials: Plaintiffs and Defendants as Private Attorneys General*, 88 COLUM. L. REV. 247, 284, 295–96 (1988) (noting specifically

likelihood that a suit will deter wrongdoing.²⁸ Further, Bentham's theory of deterrence presumes that members of the public comply with law after coldly calculating probabilities and penalties, a presumption which scholars have recently challenged in light of extensive empirical research on heuristics and biases, which suggests that people are only "boundedly rational."²⁹

Next, *effectuation values* posit that civil processes are the means by which persons are able to get, or are given assurance of having, whatever society deems rightfully theirs. From this perspective, one views the world from the standpoint of a member of the public harmed by unlawful conduct (as distinguished from the perspective of society as a whole, a perspective more closely aligned with the value of deterrence).³⁰ Value is ascribed to the actual protection and realization of the interests of the litigant that the law purports to protect and effectuate and, more generally, to a prevailing assurance that those interests will be protected.³¹ Private litigation is regarded as a process for providing this protection and assurance. An important social purpose of the civil justice system is compensating victims for injury. As Karl Llewellyn long ago suggested, civil processes are designed to provide the person harmed a "right"—"a likelihood . . . [to] induce a court to squeeze out . . . damages; more: to the extent that the likely collections will cover [the victim's] damage."³² This is, in effect, the basic economic model of litigation: plaintiff's net expected gain = gross gain - litigation costs.³³

Those who advance the value of effectuating rights have highlighted the routine under-compensation provided to victims harmed by injurious conduct,³⁴ a problem that is most acute in the context of losses so small to each consumer or employee that no person would think it rational to sue for damages. Modern civil procedure has attempted to address this problem by allowing a variety of procedures that aggregate these small claims into financially viable larger claims, such as the private attorney general model and the class action device.³⁵ Yet scholars have warned of the difficulty of monitoring plaintiffs' attorneys who are compensated out of the pool of funds awarded to large classes of harmed

"ignorance of their rights, poverty, fear of police reprisals, or the burdens of incarceration.").

28. *Id.* at 283; Brian J. Serr, *Turning Section 1983's Protection of Civil Rights Into an Attractive Nuisance: Extra-Textual Barriers to Municipal Liability Under Monell*, 35 GA. L. REV. 881 (2001); Dina Mishra, *Comment, Undermining Excessive Privacy for Police: Citizen Tape Recording to Check Police Officers' Power*, 117 YALE L.J. 1549, 1554 (2008). Moreover, Joanna Schwartz has demonstrated that accounts of civil justice that turn on robust theories of deterrence rely too heavily on outdated model of unbounded rational decision-making which in tension with more recent, empirically based accounts of bounded human cognition and decision-making. Schwartz, *supra* note 4, at 1028–30.

29. *See Id.* at 1026–27.

30. *See* RONALD DWORKIN, *A MATTER OF PRINCIPLE* 73–74 (1985).

31. *See* Michelman, *supra* note 5, at 1176–77.

32. *See* KARL N. LLEWELLYN, *JURISPRUDENCE: REALISM IN THEORY AND PRACTICE* 22 (1962).

33. *See* George L. Priest & Benjamin Klein, *The Selection of Disputes for Litigation*, 13 J. LEGAL STUD. 1 (1984). *See also* Jonah B. Gelbach, *Locking the Doors to Discovery? Assessing the Effects of Twombly and Iqbal on Access to Discovery*, 121 YALE L. J. 2270, 2303 (2012).

34. *See* Saks, *supra* note 5, at 1217–25; Stephen J. Spurr & Walter O. Simmons, *Medical Malpractice in Michigan: An Economic Analysis*, 21 J. HEALTH POL., POL'Y & L. 315, 316 (1996) (finding that medical malpractice cases settle for approximately 16 to 20% less than the expected value of claims in litigation "because plaintiffs are risk-averse").

35. *See* Resnik, *Fairness in Numbers*, *supra* note 5, at 83–84.

individuals.³⁶ Of late, the private attorney general model and class action device have come under considerable attack.³⁷ The effectuation value of civil litigation is closely related to corrective justice, which concerns itself with what is needed to restore the status quo ex ante and compensation.³⁸

Another value that the civil justice system seeks to promote is *efficiency*.³⁹ While civil justice renders society's substantive policies more probable and public, debate centers around the costs imposed. Tort reformers, as well as judges,⁴⁰ have lamented the costs and burdens imposed by litigation,⁴¹ including the cost of civil discovery.⁴² This concern relates to two aspects of costs: direct costs and the cost of legal error.⁴³ First, the civil justice system imposes direct costs on courts, agencies, litigants, witnesses, and jurors. Second, as Judge Richard Posner⁴⁴ has argued, insofar as civil procedures aim to promote economic efficiency, then both the mistaken imposition of legal liability (false positives—incorrectly finding a defendant liable) *and* the mistaken failure to impose liability (false negatives—incorrectly finding a defendant not liable) reduce efficiency. Thus, the civil justice system imposes cost of error which may be regarded as the product of two factors: the probability of error and the cost of both false positive and false negative errors that occur.⁴⁵ Both direct costs and decisional errors are social costs imposed by the civil justice system.

Efficiency also relates to the time expended within a civil justice system: all else being equal, a civil justice system with less time delay would be more efficient. While efficiency is desirable, this value often raises distributional questions that demand specificity. For example, if cost reduction is desired, then whose costs shall be reduced: costs borne by claimants, defendants, the public, courts, all or some of the above? If reduction of delay is desired, then whose time shall be saved: delay borne by claimants, defendants, the public, courts, all or some of the above? Finally, in many instances, cost efficiency and time efficiency conflict. On the one hand, hiring more court personnel may increase the capacity of courts to resolve disputes and, therefore, reduce delay; on the other, this investment in court personnel will increase direct costs borne by the public and, therefore, conflict with the aim of reducing direct costs.

36. See John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law through Class and Derivative Actions*, 86 COLUM. L. REV. 669 (1986).

37. See Resnik, *Fairness in Numbers*, *supra* note 5; Catherine R Albiston & Laura Beth Nielsen, *The Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General*, 54 UCLA L. REV. 1087 (2007).

38. See Jules L. Coleman, *Tort Law and the Demands of Corrective Justice*, 67 IND. L. REV. 349 (1992).

39. See COVER & FISS, *supra* note 7, at 1.

40. See, e.g., *Oritz v. Fibreboard Corp.*, 527 U.S. 815, 865 (1999) (Rehnquist, C. J. concurring).

41. See, e.g., COMM. FOR ECON. DEV., *BREAKING THE LITIGATION HABIT: ECONOMIC INCENTIVES FOR LEGAL REFORM* 9–10 (2010) (contending that “lawsuits are absurdly slow, capricious, and inefficient”) (quoting WALKER K. OLSON, *THE LITIGATION EXPLOSION* 343 (1991)).

42. See generally Charles Silver, *Does Civil Justice Cost Too Much?*, 80 TEX. L. REV. 2073 (2002); Robert M. Hayden, *The Cultural Logic of a Political Crisis: Common Sense, Hegemony and the Great American Liability Insurance Famine of 1986*, 11 STUD. L., POL., SOC'Y 95 (1991) (citing examples of these economic concerns).

43. See Posner, *An Economic Approach to Legal Procedure*, *supra* note 6, at 400–02.

44. See *id.*

45. *Id.* at 401–06.

Beyond meting out optimal levels of deterrence, vindicating rights, and efficiency, the civil justice system advances *participation* and *dignity* values. Participation values view civil processes as a means through which the public exerts influence or has its will counted in societal decisions.⁴⁶ Relatedly, dignity values reflect concern for the psychological harm, humiliation, or loss of self-respect that members of the public may suffer if denied an opportunity to redress harm through civil avenues. State coercion must be legitimized, not only by efficient substantive policies, but also by democratic processes that allow the public to participate in decisions affecting individual and group interests. Decreasing transparency and diminishing participation, then, may cause alienation and a loss of legitimacy and erode fundamental democratic norms and values.⁴⁷

The civil justice system also seeks to promote the value of equal treatment.⁴⁸ *Equal treatment values* reflect concern with whether civil processes are applied differently or result in different outcomes for particular classes of parties.⁴⁹ For example, civil processes may systematically undervalue evidence that would tend to support the position of a particular class of disputants. When this occurs, this class would have a legitimate objection that these civil processes have treated them unequally. From this vantage point, one may ask “whether like cases receive like attention and like evidentiary development so that the influence of . . . arbitrary factors . . . [is] minimized.”⁵⁰ Similarly, one may ask whether categories of litigants are treated similarly so that arbitrary factors, such as animus, bias, and discrimination directed against particular classes of litigants, are curtailed. If the civil justice system in process or outcome systematically favors the interests of dominant groups while disparaging the perspective of stigmatized or powerless groups, then this systemic inequality and material injustice may reflect ideological influences in judging, including system-justifying beliefs about the nature of inequality in society.⁵¹

Finally, equal treatment bridges both procedural justice and distributive justice. For example, when managerial judges endeavor to treat equally the parties in live interactions before them, the parties will not only likely experience the judge as neutral and trustworthy, but they will also experience a sense of procedural justice. Literature on distributive justice reveals that people apply multiple psychological criteria for discerning equal treatment: the principle of equity (contributions-based), the principle of equality (equal division), and the principle of need (based on individual needs). At times, there may be tension in the ways in which courts and parties appraise the criteria for equal treatment.

46. See J.S. MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT ch. III (1861) (“There is no difficulty in showing that the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is vested in the entire aggregate of the community; every citizen . . . having a voice in the exercise of that ultimate sovereignty.”)

47. See Resnik, *supra* note 5, at 91–93 (2011).

48. See Mashaw, *supra* note 7, at 52–54; Charles H. Koch Jr, *Community of Interest in the Due Process Calculus*, A, 37 HOUS. L. REV. 635, 636–37 (2000); Victor D. Quintanilla, *Critical Race Empiricism: A New Means to Measure Civil Procedure*, 3 U.C. IRVINE L. REV. 187 (2013).

49. See Mashaw, *supra* note 7, at 53.

50. Mashaw at 53.

51. Such systematically skewed outcomes may also reflect the problem of cognitive illiberalism. See Dan Kahan et al., *Whose Eyes Are You Going to Believe: Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837 (2008).

For example, the distributive justice criterion applied by courts when “treating like cases alike,” (e.g. equal division) may be in conflict with the criterion held by plaintiffs (e.g. need based) and defendants (e.g. contribution based).⁵² These epistemic conflicts underscore the need for courts to provide all parties with procedural justice. Procedural justice increases the likelihood that parties will experience justice regardless of whether their preferred distributive justice criterion is ultimately adopted.

In summary, this taxonomy has revealed multiple process values, which the civil justice system seeks and human-centered civil justice design embraces. In Part II, we use a national study to empirically evaluate the extent to which procedural justice advances these several ends.

II. AN EXPERIMENTAL INVESTIGATION OF THE PLURAL EFFECTS OF PROCEDURAL JUSTICE

To investigate the plural effects of procedural justice, we conducted a social psychological experiment with members of the American public. This study operationalized procedural justice, consistent with Part II.C., by drawing on the attributes and dimensions theorized and demonstrated in the literature to affect perceptions of procedural justice. We employed a between-subjects experiment with two factors. The first factor was procedural justice with two levels: procedural justice present vs. procedural justice absent. The second factor was outcome with three levels: favorable, unfavorable, and pending. After randomly assigning members of the public to the conditions in this 2 (procedural justice) x 3 (outcome) between-subjects experiment, our psychological measures examined perceptions and experiences of fairness, outcome satisfaction, emotions, legal accuracy, legal effectiveness, and legitimacy.

A. Hypotheses

1. Plural Effects of Procedural Justice

Consistent with psychological science on procedural justice, we hypothesized that procedural justice will broadly influence the way members of the American public think, feel, and experience civil justice. Mainly—regardless of whether members of the public receive a favorable outcome, unfavorable outcome, or have a decision pending—when procedural justice is afforded, their perceptions and experiences of fairness, outcome satisfaction, positive emotions (dampening negative emotions), legal accuracy, effectiveness of process, and legitimacy will be fostered and promoted. Conversely—regardless of whether members of the public receive a favorable outcome, unfavorable outcome, or have a decision pending—when procedural justice is withheld, their perceptions and experiences of fairness, outcome satisfaction, positive emotions (dampening negative emotions), legal accuracy, effectiveness of process, and legitimacy will be eroded and diminished.

52. Mashaw, *supra* note 7, at 53.

2. Convergence of Plural Effects: Experiences of Justice

Next, if the public effects are observed, our exploratory hypothesis was that these plural effects on thoughts, feelings, and experiences might converge on an underlying factor, specifically the fundamental experience of justice.

B. Research Method and Overview

1. Participants

To examine the plural effects of procedural justice, we conducted an experiment using a sample of members of the American public, which we recruited online via Amazon Mechanical Turk.⁵³ Our original sample consisted of 600, but participants were excluded from our analysis for failing the attention or manipulation checks described below. Our final sample ($N = 400$) consisted of 204 (51%) males and 196 (49%) females, who had on average completed at least some courses at a four-year university. The mean age was 35.42 ($SD = 12.83$). Participants self-identified as White/European American (81.8%), Black/African American (4.5%), Latino/a (2.8%), Asian American/Pacific Islander (6.3%), and/or Other (4.8%).

2. Materials and Procedure

After providing informed consent, participants were randomly assigned to either a procedural justice afforded or a procedural justice withheld condition, where participants then reviewed three legal dispute scenarios. Simultaneously, participants were randomly assigned either to a favorable outcome, an unfavorable outcome, or a pending decision condition. In short, the experiment entailed a 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) between-subjects design.⁵⁴

53. See Krista Casler et al., *Separate but Equal? A Comparison of Participants and Data Gathered via Amazon's MTurk, Social Media, and Face-to-face Behavioral Testing*, 29 *COMPUTERS HUM. BEH.* 2156 (2013); Rick M. Gardner et al., *Using Amazon's Mechanical Turk Website to Measure Accuracy of Body Size Estimation and Body Dissatisfaction*, 9 *BODY IMAGE* 532 (2012); John J. Horton et al., *The Online Laboratory: Conducting Experiments in a Real Labor Market*, 14 *EXPERIMENTAL ECON.* 399 (2011); Winter Mason & Siddharth Suri, *Conducting Behavioral Research on Amazon's Mechanical Turk*, 44 *BEHAV. RES. METHODS* 1 (2012); Gabriele Paolacci et al., *Running Experiments on Amazon Mechanical Turk*, 5 *JUDGMENT & DECISION MAKING* 411 (2010). Participants received a \$1.00 payment as compensation for participation in our study. *Amazon Mechanical Turk*, AMAZON, www.mturk.com/mturk/welcome.

54. Amazon Mechanical Turk is widely employed within the behavioral and social sciences as a platform to recruit nationally representative samples of the American public. For literature discussing between-subject designs, see SHERRI L. JACKSON, *RESEARCH METHODS AND STATISTICS A CRITICAL THINKING APPROACH*, 152–62 (2003); S. Alexander Haslam & Craig McGarty, *Experimental Design and Causality in Social Psychological Research*, in *THE SAGE HANDBOOK OF METHODS IN SOCIAL PSYCHOLOGY* 245 (Carol Sansone et al. eds., 2004); and Eliot R. Smith, *Research Design*, in *THE HANDBOOK OF RESEARCH METHODS IN SOCIAL AND PERSONALITY PSYCHOLOGY* 17–39 (Harry T. Reis & Charles M. Judd eds., 1st ed., 2000).

Figure 1. 2 x 3 Between-Subjects Design

	Favorable Outcome	Unfavorable Outcome	Dispute Pending
Procedural Justice Afforded	<i>Procedural Justice Afforded & Favorable Outcome</i>	<i>Procedural Justice Afforded & Unfavorable Outcome</i>	<i>Procedural Justice Afforded & Pending Resolution</i>
Procedural Justice Withheld	<i>Procedural Justice Withheld & Favorable Outcome</i>	<i>Procedural Justice Withheld & Unfavorable Outcome</i>	<i>Procedural Justice Withheld & Pending Resolution</i>

After random assignment, each participant reviewed three dispute scenarios: an employment dispute, a child custody dispute, and a landlord-tenant dispute. In designing the dispute scenarios, our objective was to devise disputes where the correct outcome of each dispute was unclear.⁵⁵ For example, in the employment dispute scenario, the participants played the role of a long-time employee who was fired after being wrongly accused of stealing money from a cash drawer. The terminated employee knew which co-worker stole the money and confronted the thief, but did not report the co-worker to a supervisor. Instead, the employee challenged the termination by filing a grievance with the company's human resources department. In the child-custody dispute scenario, participants were placed in the role of a spouse who was involved in a divorce with a contested issue of child custody in which both spouses were equally qualified to take custody of the child. In the landlord-tenant dispute, participants were placed in the role of a renter who received an eviction notice after allowing their desperately ill mother to stay in their apartment, which may have violated a restriction on overnight guests. Participants were asked to decide whether to challenge the eviction by filing a complaint with a local housing official.

After reviewing the legal disputes, participants rated the dependant measures, described below, and answered two manipulation checks ensuring that they understood (and remembered) the process employed and the outcome of the dispute, along with two attention checks ensuring that they carefully attended to what they read.⁵⁶ Last, participants provided demographic information.

a. Procedural Justice Manipulation

We manipulated the first factor, procedural justice, with two levels: present or absent. As discussed in Part II.C., the literature on procedural justice demonstrates that

55. Perception of procedural fairness is especially important in the face of uncertainty. See Kees van den Bos, *Uncertainty Management: The Influence of Uncertainty Salience on Reactions to Perceived Procedural Fairness*, 80 J. PERSONALITY & SOC. PSYCHOL. 931, 931–41 (2001).

56. See Daniel M. Oppenheimer, Tom Meyvis, & Nicolas Davidenko, *Instructional Manipulation Checks: Detecting Satisficing to Increase Statistical Power*, 45 J. EXPERIMENTAL SOC. PSYCHOL. 867 (2009).

certain attributes—including whether one is provided a voice and an opportunity to be heard, whether there was a neutral and trustworthy decision maker, and whether one was treated with dignity and respect—shape perceptions of procedural justice. The procedural-justice-present participants were provided all of these attributes, while the procedural-justice-absent participants were afforded none.⁵⁷ In the employment dispute, for example, the condition in which procedural justice was afforded stated:

You met with the HR official. The official allowed you to explain why you believe you should not have been fired. The official was polite and respectful in response to your complaint. The official used objective criteria in determining your wrongful termination complaint and was unbiased when making a decision. You found the official trustworthy.

Whereas the condition in which procedural justice was withheld stated:

You met with the HR official. The official did not allow you to explain why you believe you should not have been fired. The official was neither polite nor respectful in response to your complaint. The official did not use objective criteria and was biased when making a decision. You found the official untrustworthy.

b. Outcome Manipulation

We manipulated the second factor, dispute outcome, with three levels: favorable, unfavorable, or pending decision (i.e., awaiting an ultimate decision). In the employment dispute, for example, participants who were randomly assigned to the favorable outcome were informed: *After the meeting, the HR official decided you were terminated incorrectly. You are reinstated into your old position.* Those who were randomly assigned to the unfavorable outcome were informed: *After the meeting, the HR official decided that you were terminated correctly. You are not reinstated into your old position.* Finally, those who were randomly assigned into the pending decision outcome were informed: *You will soon be informed of the HR official's decision.*

3. Measures

Based upon their thoughts, feelings, and experiences about the handling of the legal disputes, participants rated items that comprised seven dependent measures—overall fairness, outcome satisfaction, legal accuracy, effectiveness of process, positive emotions, negative emotions, and legitimacy. All items were rated on a 7-point scale ranging from 1 (Not at all) to 7 (Very), except for overall fairness which was rated on a 10-point scale from 1 (Not at all fair) to 10 (Very fair).⁵⁸ After creating mean composites for each item across the three disputes, we conducted confirmatory factor analyses and created mean composites that reflect these seven dependent measures, detailed below.

a. Overall Fairness

Participants rated the fairness that they experienced on six items—overall fairness, fair resolution, fair handling, fair treatment, fair decision, and fair procedures—which

57. The manipulations are described in Part II.B, *infra*.

58. Participants rated these dependent measures in the following order: emotions (positive and negative), legal accuracy, efficiency of process, overall fairness, outcome satisfaction, and legitimacy.

assessed their experience of overall fairness of dispute resolution, including aspects of both procedural fairness (*How would you rate the overall fairness of this experience?*) and outcome fairness (*How fairly would you say the issue (or problem) was resolved?*). These six items were averaged to create an overall fairness composite (Cronbach's $\alpha = .979$),⁵⁹ with higher scores indicating greater experiences of overall fairness. Participants randomly assigned into the pending dispute condition addressed their impressions of the handling of the dispute thus far (*How fairly would you say the issue (or problem) is being resolved?*).

b. Outcome Satisfaction

Participants rated the outcomes they received on three items—outcome satisfaction, outcome fairness, and satisfaction with final result—which assessed their satisfaction with the final outcome (*How satisfied are you with the outcome you received?*). These three items were averaged to create an outcome satisfaction composite (Cronbach's $\alpha = .986$), with higher scores indicating greater outcome satisfaction. Because participants randomly assigned to the pending decision condition had not obtained outcomes, only participants who received favorable or unfavorable outcomes completed these items.

c. Positive and Negative Emotions

An individual's perception that procedures are just often enhances positive emotions and dampens negative emotions.⁶⁰ Drawing on the PANAS measurement tool, a widely employed instrument in the field of social psychology, discrete emotions were selected and measured, across all conditions, including whether the way participants were treated made them feel happy, proud, angry, ashamed, sad, embarrassed, depressed, distressed, cheated, or satisfied.⁶¹ When analyzing across these distinct emotions, an exploratory factor analysis revealed a two-factor solution, which loaded onto positive and negative emotions.⁶² Composites were, in turn, created for positive and negative emotions (Cronbach's $\alpha = .911, .942$, respectively), with higher scores indicating experiences of greater positive and greater negative emotions.

59. For a discussion of Cronbach's alpha, see CHAVA FRANKFORT-NACHMIAS & DAVID NACHMIAS, RESEARCH METHODS IN THE SOCIAL SCIENCES 425 (6th ed. 2000). For a discussion of Cronbach's alpha and the test of unidimensionality, see SPSS FAQ, What Does Cronbach's alpha mean? available at www.ats.ucla.edu/stat/spss/faq/alpha.html.

60. See Kees van den Bos, Allan E. Lind, Riel Vermunt, & Henk A. M. Wilke, *How do I Judge my Outcome When I do not Know the Outcome of Others? The Psychology of the Fair Process Effect*, 72 J. PERSONALITY & SOC. PSYCHOL. 1034 (1997).

61. The PANAS instrument has been cited more than 3,000 in the psychological literature. For articles that use and discuss the PANAS, see Eddie Harmon-Jones et al., *PANAS Positive Activation is Associated with Anger*, 9 EMOTION 183 (2009); Boris Egloff et al., *Facets of Dynamic Positive Affect: Differentiating Joy, Interest and Activation in the Positive and Negative Affect Schedule (PANAS)*, 85 J. PERSONALITY & SOC. PSYCHOL. 528 (2003); C. Daniel Batson et al., *Empathy and Attitudes: Can Feeling for a Member of a Stigmatized Group Improve Feelings Towards the Group?* 72 J. PERSONALITY & SOC. PSYCHOL. 105 (1997).

62. The cross-scenario two-factor solution yielded two significant eigenvalues of 6.31 and 1.84 for the negative and positive emotions, respectively, explaining 63.1% and 18.35% of the total variation. Cumulatively these two dimensions explained roughly 81% of the total variance. The Kaiser-Meyer-Olkin (KMO) statistic was .893 with a significant Bartlett's Test of Sphericity ($p < .001$), indicating the appropriateness of the factor analysis.

d. Legal Accuracy

Participants also rated the accuracy of the process (*How accurate was the process used to decide your appeal?*) and the accuracy of the outcome obtained or expected (*How accurate was the outcome of your appeal?*). After an exploratory factor analysis revealed that these two items loaded onto a single factor, we averaged the two items together to create a perceived accuracy composite (Cronbach's $\alpha = .907$), with higher scores indicating more favorable perceptions of legal accuracy. Participants randomly assigned to the pending decision condition rated the accuracy of the process based on their impressions of the handling of the dispute (*How accurate will the outcome of your appeal likely be?*).

e. Effectiveness of Process

Participants across all conditions also rated the effectiveness of the procedures (*How effective were the procedures used to handle and decide your appeal?*). Higher scores indicated more favorable impressions about the effectiveness of the procedure.

f. Legitimacy

Participants rated both process and outcome on four items—outcome legitimacy, outcome acceptance, outcome challenge, and overall satisfaction with handling—which assessed the perceived legitimacy of dispute resolution (*How legitimate was the outcome you received? How likely is it that you would challenge the outcome of this dispute? Reverse Coded*). We averaged the four items together to create a legitimacy composite (Cronbach's $\alpha = .972$), with higher scores indicating greater perceived legitimacy. Only participants who received favorable or unfavorable outcomes completed these items.

g. Manipulation and Attention Checks

After completing each legal dispute, participants answered three manipulation checks, and at the conclusion of the experiment, participants answered one attention check. The manipulation check ensured that participants could correctly identify whether they were provided procedural justice (*The local landlord/tenant official allowed you to provide your input before a decision was made*) and the outcome obtained (*The official decided that your eviction was improper and that you can stay in the apartment*). The attention check ensured that participants were in fact reading the materials (*If you are reading this question and have read all other questions, please select the box marked 'other' and type 'Decision Making' in the box below*).

As is methodologically recommended, we excluded those who did not pass these checks; thus the final sample consisted of $N = 400$ participants.

C. Results

To analyze the influence of procedural justice on these seven dependent measures, we conducted a 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) two-way between-subjects analysis of variance ("ANOVA") on these seven dependent measures. On the two outcome-related dependent measures, which

were not completed by participants randomly assigned to the pending decision condition, we conducted a 2 (procedural justice: present, absent) x 2 (outcome: favorable, unfavorable) two-way between-subjects ANOVA.

1. The Plural Effects of Procedural Justice

We investigated the influence of procedural justice on overall fairness, outcome satisfaction, positive emotions, negative emotions, legal accuracy, effectiveness of procedure, and legitimacy. The analytic strategy employed for each dependent measure consisted of two-way between-subjects ANOVA, examining the influence of procedural justice and outcome on these dependent measures. All means and standard deviations are reported in Table 1.

a. Overall Fairness

A 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) ANOVA revealed a significant main effect of procedural justice on overall fairness, $F(1,394) = 965.48, p < .001, \eta p^2 = .71$. Consistent with prior research, participants reported significantly more overall fairness when procedural justice was afforded ($M = 6.91, SD = 2.32$) than when procedural justice was withheld ($M = 2.44, SD = 1.64$). The ANOVA also revealed a significant main effect of dispute outcome, $F(2, 394) = 700.47, p < .001, \eta p^2 = .47$, whereby those who received favorable outcomes reported more overall fairness ($M = 6.56, SD = 2.62$) than both those who received unfavorable outcomes ($M = 3.16, SD = 2.15$), and those awaiting outcomes ($M = 4.62, SD = 3.18$); and a significant 2-way interaction, $F(2, 394) = 62.55, p < .001, \eta p^2 = .14$, indicating that the magnitude of the procedural justice effect was moderated by dispute outcome.

Simple effects tests examined the effect of procedural justice for participants with favorable, unfavorable, and pending cases separately. Procedural justice influenced overall fairness both for members of the public who received favorable decisions, $F(1, 394) = 269.78, p < .001, \eta p^2 = .41, 95\% \text{ CI } [3.83, 4.87]$, and those who received unfavorable decisions, $F(1, 394) = 176.14, p < .001, \eta p^2 = .31, 95\% \text{ CI } [2.67, 3.59]$. Procedural justice also shaped overall fairness for participants awaiting decisions, $F(1, 394) = 592.97, p < .001, \eta p^2 = .60, 95\% \text{ CI } [5.31, 6.24]$.

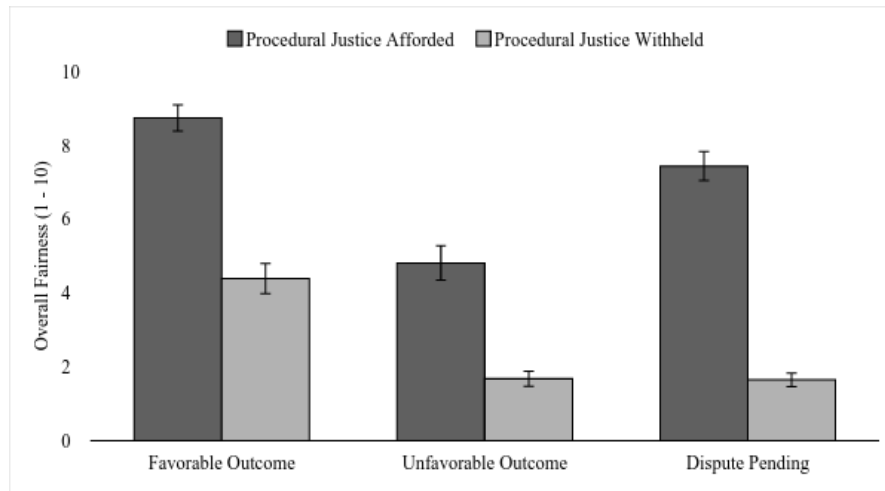


Figure 2. Mean overall fairness ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes, unfavorable outcomes, and decision pending. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

b. Outcome Satisfaction

A 2 (procedural justice: present, absent) x 2 (outcome: favorable, unfavorable) ANOVA revealed a significant main effect of procedural justice on outcome satisfaction, $F(1, 254) = 70.50, p < .001, \eta_p^2 = .22$, whereby participants reported significantly more outcome satisfaction when procedural justice was afforded ($M = 4.31, SD = 2.14$), than when procedural justice was withheld ($M = 3.23, SD = 2.20$). The ANOVA also revealed a significant main effect of dispute outcome, $F(2, 254) = 1234.83, p < .001, \eta_p^2 = .83$. Participants who received favorable outcomes were more satisfied with their outcomes ($M = 5.98, SD = 1.00$) than those who received unfavorable outcomes ($M = 1.99, SD = 1.04$); and the 2-way interaction was not significant, $F(1, 254) = 1.99, p = .160, \eta_p^2 = .01$, indicating that this effect of procedural justice was not moderated by dispute outcome.

Simple effects tests examined the effect of procedural justice for participants with favorable and unfavorable outcomes separately. Procedural justice influenced outcome satisfaction both for participants who received favorable decisions, $F(1, 254) = 21.89, p < .001, \eta_p^2 = .08, 95\% \text{ CI } [.46, 1.12]$, and for participants who received unfavorable decisions, $F(1, 254) = 54.32, p < .001, \eta_p^2 = .18, 95\% \text{ CI } [.81, 1.40]$.

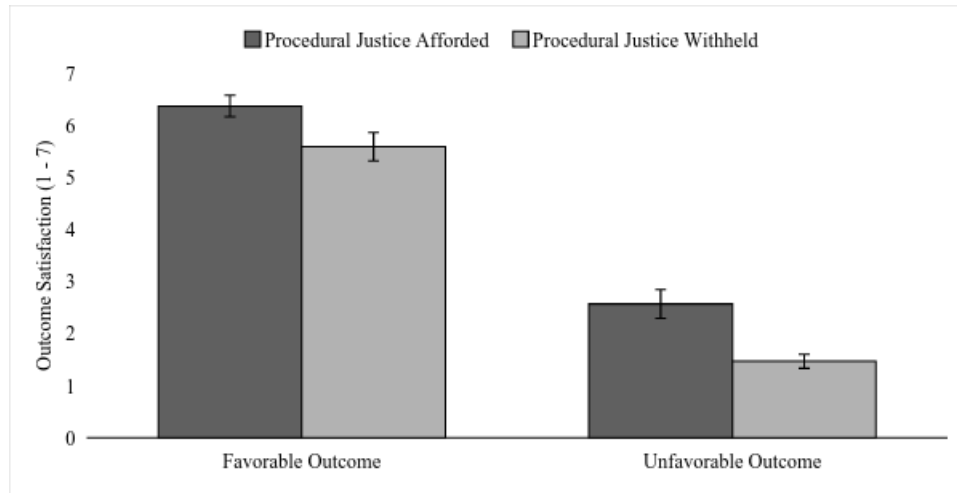


Figure 3. Mean outcome satisfaction ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes and unfavorable outcomes. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

c. Positive and Negative Emotions

A 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) ANOVA conducted on positive emotions and negative emotions, separately, revealed a significant main effect of procedural justice on both positive emotions, $F(1, 394) = 548.85, p < .001, \eta_p^2 = .58$, and negative emotions, $F(1, 394) = 311.24, p < .001, \eta_p^2 = .44$. When procedural justice was afforded, participants reported more positive emotions ($M = 3.56, SD = 1.83$) and less negative emotions ($M = 2.82, SD = 1.68$) than when procedural justice was withheld (positive emotions: $M = 1.44, SD = .80$; negative emotions: $M = 4.93, SD = 1.22$). The ANOVA also revealed a significant main effect of dispute outcome on both positive emotions, $F(2, 394) = 199.34, p < .001, \eta_p^2 = .50$, and negative emotions, $F(2, 394) = 85.03, p < .001, \eta_p^2 = .30$, whereby those who received favorable outcomes reported more positive emotions and less negative emotions (positive emotions: $M = 3.76, SD = 1.95$; negative emotions: $M = 2.96, SD = 1.73$) than both those who received unfavorable outcomes (positive emotions: $M = 1.44, SD = .74$; negative emotions: $M = 4.87, SD = 1.27$) and those awaiting outcomes (positive emotions: $M = 2.53, SD = 1.67$, negative emotions: $M = 3.63, SD = 1.85$). Moreover, the 2-way interaction was significant for both positive emotions, $F(2, 394) = 77.42, p < .001, \eta_p^2 = .28$, and negative emotions, $F(2, 394) = 27.19, p < .001, \eta_p^2 = .12$, indicating that the influence of procedural justice on positive and negative emotions was moderated by dispute outcome.

Simple effects tests examined the effect of procedural justice for participants with favorable, unfavorable, and pending outcomes separately. For participants who received favorable decisions, procedural justice influenced positive emotions, $F(1, 394) = 361.40, p < .001, \eta_p^2 = .48, 95\% CI [2.94, 3.62]$, and negative emotions, $F(1, 394) = 125.78, p <$

.001, $\eta_p^2 = .24$, 95% CI [-2.92, -2.05]. For those who received unfavorable decisions procedural justice also influenced positive emotions, $F(1, 394) = 14.95$, $p < .001$, $\eta_p^2 = .04$, 95% CI [.29, .90], and negative emotions, $F(1, 394) = 21.85$, $p < .001$, $\eta_p^2 = .05$, 95% CI [-1.31, -.53]. For participants awaiting decisions, procedural justice had an even larger effect on positive emotions, $F(1, 394) = 291.42$, $p < .001$, $\eta_p^2 = .43$, 95% CI [2.33, 2.94], and negative emotions, $F(1, 394) = 291.42$, $p < .001$, $\eta_p^2 = .43$, 95% CI [-3.28, -2.50].

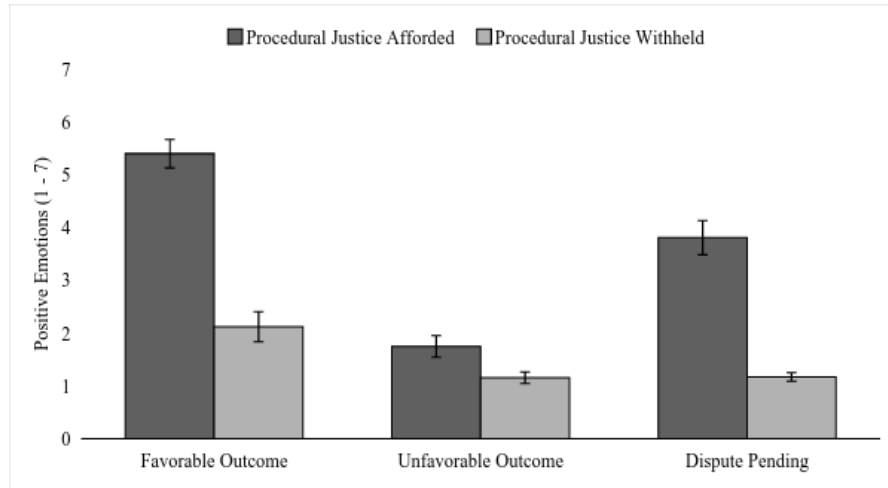


Figure 4. Mean positive emotion ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes, unfavorable outcomes, and decision pending. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

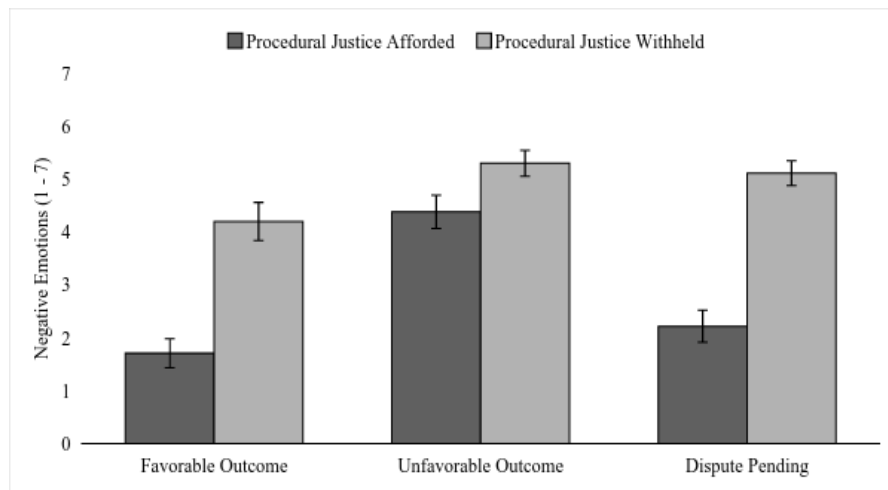


Figure 5. Mean negative emotion ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes, unfavorable outcomes, and

decision pending. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

d. Legal Accuracy

A 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) ANOVA revealed a significant main effect of procedural justice on perceived legal accuracy, $F(1, 394) = 677.53, p < .001, \eta_p^2 = .63$, whereby participants reported significantly greater legal accuracy when procedural justice was afforded ($M = 5.00, SD = 1.41$) than when procedural justice was withheld ($M = 2.42, SD = 1.33$). The ANOVA also revealed a significant main effect of dispute outcome, $F(2, 394) = 184.40, p < .001, \eta_p^2 = .48$, whereby those who received favorable outcomes reported significantly greater legal accuracy ($M = 5.09, SD = 1.39$) than both those who received unfavorable outcomes ($M = 2.76, SD = 1.43$) and those awaiting decisions ($M = 3.54, SD = 1.98$); and a significant 2-way interaction, $F(2, 394) = 27.88, p < .001, \eta_p^2 = .12$, indicating that the effect of procedural justice on legal accuracy was moderated by dispute outcome.

Simple effects tests examined the effect of procedural justice on perceived legal accuracy for participants with favorable, unfavorable, and pending outcomes separately. Procedural justice significantly influenced legal accuracy both for participants who received favorable decisions, $F(1, 394) = 121.96, p < .001, \eta_p^2 = .24, 95\% \text{ CI } [1.63, 2.34]$, and for those who received unfavorable decisions, $F(1, 394) = 162.45, p < .001, \eta_p^2 = .29, 95\% \text{ CI } [1.73, 2.36]$. Procedural justice appeared to have an even larger effect on legal accuracy for participants awaiting decisions, $F(1, 394) = 475.70, p < .001, \eta_p^2 = .55, 95\% \text{ CI } [3.20, 3.83]$.

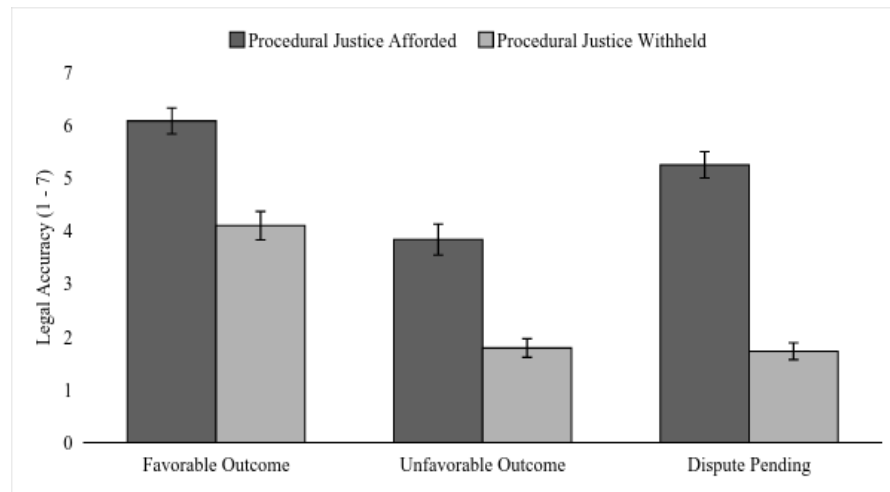


Figure 6. Mean legal accuracy ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes, unfavorable outcomes, and decision pending. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

e. Effectiveness of Process

A 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) ANOVA revealed a significant main effect of procedural justice on perceived effectiveness of process, $F(1, 394) = 886.38, p < .001, \eta_p^2 = .69$. Participants reported significantly greater effectiveness of process when procedural justice was afforded ($M = 5.11, SD = 1.44$) than when procedural justice was withheld ($M = 1.98, SD = 1.12$). The ANOVA also revealed a significant main effect of dispute outcome, $F(2, 394) = 96.24, p < .001, \eta_p^2 = .33$, whereby those who received favorable outcomes reported significantly greater effectiveness of process ($M = 4.58, SD = 1.95$) than both those who received unfavorable outcomes ($M = 2.71, SD = 1.58$) and those awaiting decisions ($M = 3.51, SD = 2.11$); and a significant 2-way interaction, $F(2, 394) = 16.03, p < .001, \eta_p^2 = .08$, indicating that the influence of procedural justice on the perceived effectiveness of process was moderated by dispute outcome.

Simple effects tests again examined the effect of procedural justice for participants with favorable, unfavorable, and pending outcomes separately. Procedural justice influenced perceptions of the effectiveness of procedure both for participants who received favorable decisions, $F(1, 394) = 266.82, p < .001, \eta_p^2 = .40, 95\% \text{ CI } [2.79, 3.55]$, and for those who received unfavorable decisions, $F(1, 394) = 189.20, p < .001, \eta_p^2 = .32, 95\% \text{ CI } [2.04, 2.72]$. Procedural justice appeared to have a slightly larger effect on perceived effectiveness of process for participants awaiting decisions, $F(1, 394) = 468.02, p < .001, \eta_p^2 = .54, 95\% \text{ CI } [3.42, 4.11]$.

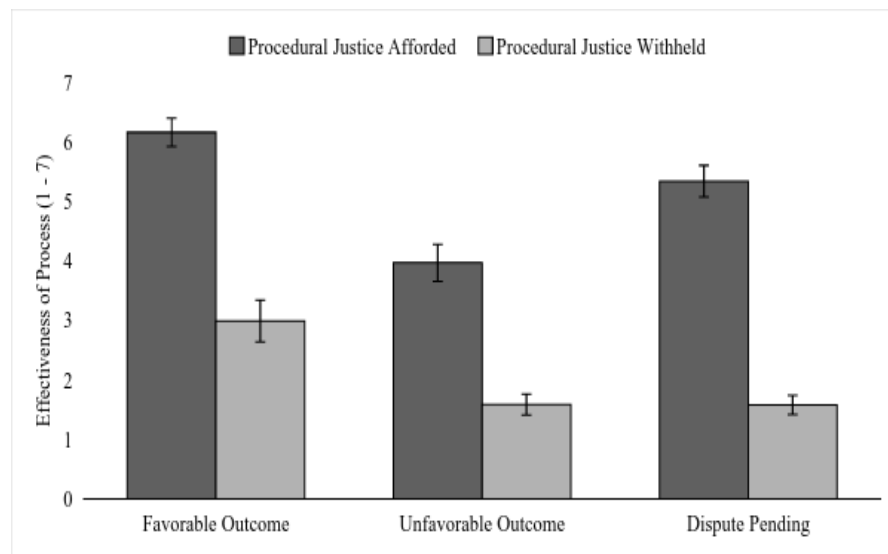


Figure 7. Mean effectiveness of process ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes, unfavorable outcomes, and decision pending. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

f. Legitimacy

A 2 (procedural justice: present, absent) x 2 (outcome: favorable, unfavorable) ANOVA revealed a significant main effect of procedural justice on the perceived legitimacy of dispute resolution, $F(1, 254) = 127.83, p < .001, \eta_p^2 = .36$. Consistent with prior literature on procedural justice, participants reported significantly more legitimacy when procedural justice was afforded ($M = 4.55, SD = 1.93$) than when procedural justice was withheld ($M = 3.30, SD = 1.93$). The ANOVA also revealed a significant main effect of dispute outcome, $F(1, 254) = 1203.20, p < .001, \eta_p^2 = .83$, whereby those who received favorable outcomes reported significantly more legitimacy ($M = 5.89, SD = .90$) than those who received unfavorable outcomes ($M = 2.33, SD = 1.06$); and that the 2-way interaction was not significant, $F(1, 254) = .84, p = .360, \eta_p^2 = .00$, indicating that the effect of procedural justice on legitimacy was not moderated by dispute outcome.

Simple effects tests examined the effect of procedural justice for participants with favorable and unfavorable outcomes separately. Procedural justice had a significant effect on perceived legitimacy of dispute resolution both for participants who received favorable decisions, $F(1, 254) = 48.42, p < .001, \eta_p^2 = .16, 95\% CI [.76, 1.35]$, and for those who received unfavorable decisions, $F(1, 254) = 84.38, p < .001, \eta_p^2 = .25, 95\% CI [.97, 1.50]$.

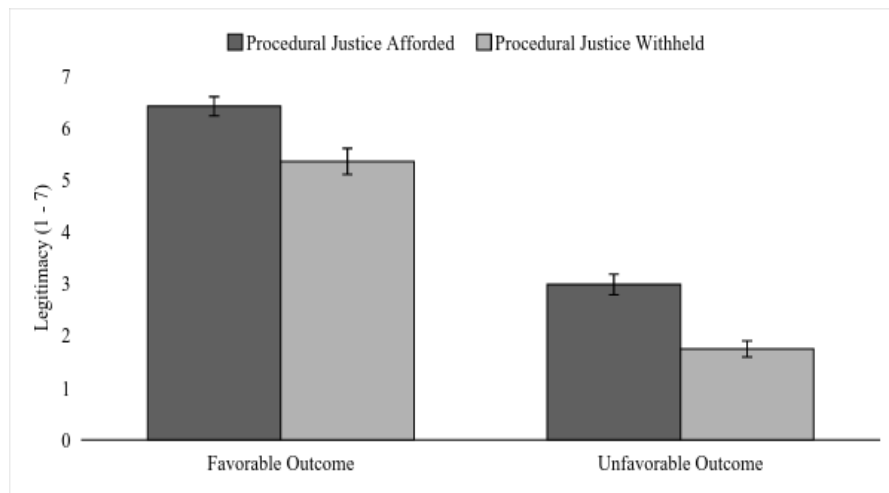


Figure 8. Mean legitimacy ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes and unfavorable outcomes. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

Table 1. Means, Standard Deviations, and 95% CI for Measures

Dependent Measure	Procedural Justice Afforded			Procedural Justice Withheld		
	<i>n</i>	M(SD)	95% CI	<i>n</i>	M(SD)	95% CI
<i>Overall Fairness</i>						
Favorable Outcome	57	8.73 (1.35)a	[8.38, 9.09]	57	4.39 (1.54)b	[3.98, 4.80]

Unfavorable Outcome	68	4.81 (1.93)a	[4.35, 5.28]	76	1.68 (.91)b	[1.48, 1.89]
Dispute Pending	73	7.43 (1.67)a	[7.04, 7.82]	69	1.65 (.77)b	[1.47, 1.84]
Outcome Satisfaction						
Favorable Outcome	57	6.37 (.79)a	[6.17, 6.58]	57	5.59 (1.04)b	[5.31, 5.86]
Unfavorable Outcome	68	2.57 (1.12)a	[2.30, 2.84]	76	1.47 (.59)b	[1.33, 1.60]
Positive Emotions						
Favorable Outcome	57	5.40 (1.00)a	[5.13, 5.67]	57	2.12 (1.08)b	[1.84, 2.41]
Unfavorable Outcome	68	1.75 (.85)a	[1.55, 1.96]	76	1.16 (.48)b	[1.05, 1.27]
Dispute Pending	73	3.81 (1.39)a	[3.48, 4.13]	69	1.17 (.33)b	[1.09, 1.25]
Negative Emotions						
Favorable Outcome	57	1.71 (1.02)a	[1.44, 1.99]	57	4.20 (1.36)b	[3.84, 4.56]
Unfavorable Outcome	68	4.38 (1.30)a	[4.07, 4.70]	76	5.30 (1.07)b	[5.06, 5.55]
Dispute Pending	73	2.22 (1.31)a	[1.92, 2.53]	69	5.11 (.98)b	[4.88, 5.35]
Legal Accuracy						
Favorable Outcome	57	6.08 (.91)a	[5.84, 6.33]	57	4.10 (1.03)b	[3.83, 4.37]
Unfavorable Outcome	68	3.84 (1.23)a	[3.54, 4.13]	76	1.79 (.76)b	[1.62, 1.97]
Dispute Pending	73	5.25 (1.07)a	[5.00, 5.50]	69	1.73 (.68)b	[1.57, 1.89]
Effectiveness of Process						
Favorable Outcome	57	6.16 (.90)a	[5.92, 6.40]	57	2.99 (1.32)b	[2.64, 3.34]
Unfavorable Outcome	68	3.97 (1.29)a	[3.66, 4.28]	76	1.59 (.77)b	[1.42, 1.77]
Dispute Pending	73	5.34 (1.14)a	[5.08, 5.61]	69	1.58 (.67)b	[1.42, 1.74]
Legitimacy						
Favorable Outcome	57	6.42 (.70)a	[6.23, 6.60]	57	5.36 (.75)b	[5.16, 5.56]
Unfavorable Outcome	68	2.99 (1.04)a	[2.74, 3.24]	76	1.75 (.68)b	[1.59, 1.90]

Note. Means on the same row with unlike subscripts different at $\alpha < .05$.

g. Discussion

This empirical legal study experimentally examined the effect of procedural justice on experiences and perceptions of *overall fairness*, *outcome satisfaction*, *positive emotions*, *negative emotions*, *legal accuracy*, *effectiveness of process*, and *legitimacy*. The findings support the primary hypothesis that procedural justice broadly influences the way that Americans think, feel, and experience civil justice. Consistent with prior literature and theory, regardless of whether a favorable outcome is obtained, when procedural justice is withheld, perceptions and experiences across all seven dependent measures are diminished and eroded. Conversely, regardless of whether an unfavorable outcome is obtained, when procedural justice is afforded, perceptions and experiences of all seven dependent measures are improved and fostered. The study also reveals that outcomes matter: the extent to which outcomes are favorable or unfavorable influence perceptions and experiences across these dependent measures. Even so, procedural justice influenced these

perceptions and experiences independent of the outcomes obtained in the legal disputes.

One of the strengths of this study is that these effects were explored with a voter-eligible, U.S. adult sample—a population likely to encounter the civil justice system in the role of plaintiff or defendant. It is vital to learn how different levels of procedural justice afforded affect ordinary members of the American public's thoughts, feelings, and their experiences within the civil justice system.

2. Fundamental Experiences of Justice

We next investigated our second hypothesis: the extent to which these broad and plural influences of procedural justice can be explained by a single latent factor. Our prior analysis supported the first hypothesis that procedural justice powerfully influences the experiences of the public across all seven dependent measures. Therefore, we tested our second hypothesis by examining whether the plural effects on these seven dependent measures correlated with one another. After establishing the inter-item correlation, we then conducted confirmatory factor and exploratory factor analyses to test the extent to which these seven measures form a single composite and load onto a single latent factor. Ultimately, we concluded that these seven measures, in fact, converge on a single underlying factor—fundamental experiences of justice. Our analytic strategy then entailed conducting a two-way between-subjects ANOVA to examine the influence of procedural justice on fundamental experiences of justice.

a. Plural Effects Converge: Fundamental Experiences of Justice

To begin, Table 2 reveals the inter-item correlation between these seven dependent measures. As can be observed, the variables are highly correlated, with all but two inter-item correlations rising above .680. This indicates that the psychological experiences reflected by these dependent measures are highly correlated.

Table 2. Bivariate Correlations Between Plural Effects of Procedural Justice

Measure	1	2	3	4	5	6	7
1. Overall Fairness	–						
2. Outcome Satisfaction	0.804**	–					
3. Positive Emotions	0.809**	0.700**	–				
4. Negative Emotions (rx)	0.761**	0.604**	0.764**	–			
5. Perceived Accuracy	0.953**	0.839**	0.761**	0.722**	–		
6. Effective Procedure	0.949**	0.691**	0.762**	0.726**	0.946**	–	
7. Legitimacy	0.828**	0.966**	0.734**	0.660**	0.857**	0.737**	–

Note. Negative emotions reversed coded. ** $p < .01$

Next, we conducted a confirmatory factor analysis, which revealed a Cronbach's α of .956. This evidences a high reliability that these items reflect and map onto an

underlying psychological construct. As such, we then conducted an exploratory factor analysis, which revealed that all seven dependent measures are explained by a single underlying factor. The cross-scenario solution yielded one significant eigenvalue of 5.67 for all seven measures, respectively, cumulatively explaining 80.92% of the total variation. The KMO statistic was .864 with a significant Bartlett's Test of Sphericity ($p < .001$), indicating the appropriateness of the factor analysis.

b. Fundamental Experiences of Justice

A 2 (procedural justice: present, absent) x 3 (outcome: favorable, unfavorable, pending) ANOVA revealed a significant main effect of procedural justice on experiences of justice, $F(1, 394) = 1033.96$, $p < .001$, $\eta_p^2 = .72$. Participants reported significantly greater fundamental experiences of justice when procedural justice was afforded ($M = 5.09$, $SD = 1.62$) than when procedural justice was withheld ($M = 2.35$, $SD = 1.11$). The ANOVA also revealed a significant main effect of dispute outcome, $F(2, 394) = 307.63$, $p < .001$, $\eta_p^2 = .61$, whereby those who received favorable outcomes reported significantly greater experiences of justice ($M = 5.17$, $SD = 1.56$) than both those who received unfavorable outcomes ($M = 2.53$, $SD = 1.17$) and those awaiting decisions ($M = 3.71$, $SD = 2.06$). It also revealed a significant 2-way interaction, $F(2, 394) = 52.51$, $p < .001$, $\eta_p^2 = .21$, indicating that the influence of procedural justice on experiences of justice was moderated by dispute outcome.

Simple effects tests examined the effect of procedural justice for participants with favorable, unfavorable, and pending outcomes separately. Procedural justice influenced fundamental experiences of justice for both participants who received favorable decisions, $F(1, 394) = 293.87$, $p < .001$, $\eta_p^2 = .43$, 95% CI [2.37, 2.98], and for those who received unfavorable decisions, $F(1, 394) = 148.66$, $p < .001$, $\eta_p^2 = .27$, 95% CI [1.42, 1.97]. Procedural justice had an even larger effect on experiences of justice for participants awaiting decisions, $F(1, 394) = 705.99$, $p < .001$, $\eta_p^2 = .64$, 95% CI [3.44, 3.99].

We chose to directly test whether the effect of procedural justice on experiences of justice was greater for those awaiting decisions as compared to those who had received either favorable or unfavorable decisions. The interaction contrast indicated that this was again the case, $F(1, 394) = 76.91$, $p < .001$, $\eta_p^2 = .16$, 95% CI [2.38, 3.75].⁶³ These results reveal that both procedural justice and distributive justice shape fundamental experiences of justice, a finding observed in analogous studies of procedural justice.⁶⁴

63. This difference in effect may be attributable to the difference between pre-decisional emotions and post-decisional emotions. While all participants were, in effect, asked to report their anticipated emotions in these scenarios, the participants in the ex-ante condition were awaiting the outcome of the disputes, while the participants in the outcome conditions knew the outcome, whether favorable or not. See generally Daniel Vastfjall & Paul Slovic, *Cognition and Emotion in Judgment and Decision Making*, HANDBOOK OF COGNITION & EMOTION 252 (Michael D. Robinson et al. eds., 2013).

64. See Emily C. Bianchi et al., *Trust in Decision-Making Authorities Dictates the Form of the Interactive Relationship Between Outcome Fairness and Procedural Fairness*, 41 PERSONALITY & SOC. PSYCHOL. BULL. 19 (2014); Jason A. Colquitt, Jerald Greenberg, & Cindy P. Zapata-Phelan, *What is Organizational Justice: A Historical Overview*, in HANDBOOK OF ORGANIZATIONAL JUSTICE 3 (Jerald Greenberg & Jason A. Colquitt eds., 2005).

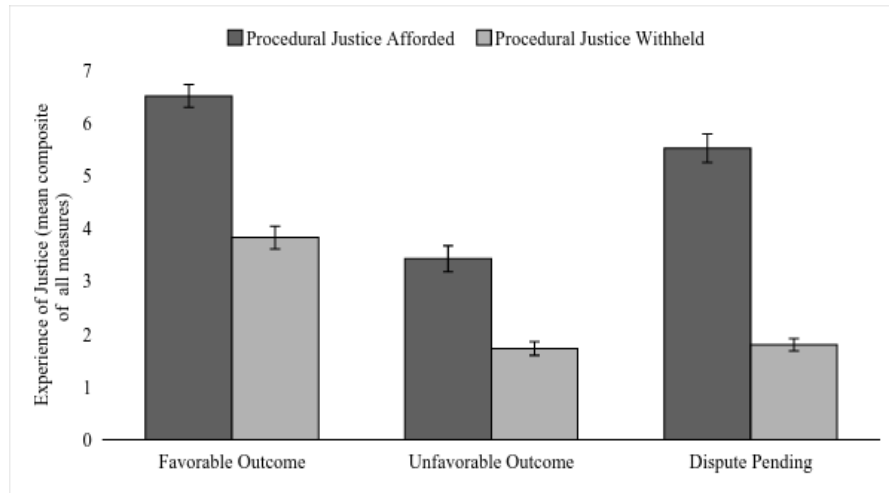


Figure 9. Mean fundamental experiences of justice ratings for dispute processes in which procedural justice is either present or absent, by favorable outcomes, unfavorable outcomes, and decision pending. Ninety-five percent confidence intervals are represented by the error bars attached to each column.

Table 3. Means, Standard Deviations, and 95% CI for Fundamental Experience of Justice

Dependent Measure	Procedural Justice Afforded			Procedural Justice Withheld		
	n	M(SD)	95% CI	n	M(SD)	95% CI
<i>Fundamental Experience of Justice</i>						
Favorable Outcome	57	6.51 (.80)a	[6.29, 6.72]	57	3.83 (.81)b	[3.62, 4.05]
Unfavorable Outcome	68	3.43 (1.01)a	[3.18, 3.67]	76	1.73 (.55)b	[1.60, 1.86]
Dispute Pending	73	5.52 (1.15)a	[5.25, 5.79]	69	1.80 (.47)b	[1.69, 1.92]

Note. Means on the same row with unlike subscripts different at alpha < .05.

c. Discussion

This second aspect of the empirical legal study examined the extent to which the plural effects of procedural justice on experiences and perceptions of *overall fairness, outcome satisfaction, positive emotions, negative emotions, legal accuracy, effectiveness of process, and legitimacy* converge on a single underlying factor. Consistent with our second hypothesis, the findings reveal that procedural justice powerfully influenced the participant’s fundamental experiences of justice. Again, regardless of whether favorable or unfavorable outcomes are obtained, when procedural justice is withheld, fundamental experiences of justice diminished and eroded. Conversely, when procedural justice is afforded, fundamental experiences of justice were improved and fostered. This effect is even starker for participants who are participating in dispute resolution and who await the

outcome of their dispute. The analysis reveals that outcomes matter: the extent to which outcomes are favorable or unfavorable influence experiences of justice. Even so, procedural justice influenced fundamental experiences of justice independent of the outcomes obtained in these legal disputes.

Regarding potential limitations of this empirical study, we varied procedural justice by simultaneously altering the following dimensions of procedural justice: *voice* and an *opportunity to be heard*, a *neutral* and *trustworthy* decision maker, and being treated with *dignity* and *respect*. However, varying one of these attributes at a time, or a cluster of several of these attributes together rather than all at once, may alter the public's experience of procedural justice as well. Moreover, this particular study used self-report measures. In the future, we will harness psycho-physiological equipment, such as galvanic skin response and cortisol measurements, to measure the public's experiences of justice. Further, in this phase of the research, we employed experimentally manipulated vignettes. While experiments that harness vignettes have high internal validity, these vignette studies may lack in external validity. Nonetheless, recent meta-analysis suggests that, when studying procedural justice, the effect sizes observed in the lab and field are comparable.⁶⁵ In the future, we aim to bridge from lab studies to field studies that harness psycho-physiological measures.

III. GENERAL DISCUSSION AND IMPLICATIONS

This empirical legal study explored whether procedural justice influences the way the American public thinks about, feels, and experiences civil justice. The analysis presented in Part II reveals that procedural justice broadly shapes perceptions and experiences—including overall fairness, outcome satisfaction, emotions, perceptions of legal accuracy, perceptions of procedural effectiveness, and the perceived legitimacy of dispute resolution—which closely relate to the process values and aims that the civil justice system seeks to foster. Moreover, the study demonstrates that when procedural justice is withheld the public's perceptions and experiences of justice erode and diminish.

This is of marked significance—procedural justice has a powerful and plural effect, simultaneously promoting many of the process values and aims of the civil justice system, including legitimacy. These plural effects, moreover, converge on an underlying factor—fundamental experiences of justice.⁶⁶ Finally, the empirical study demonstrates that whether a *result* is experienced as *just* (*outcome satisfaction*) is powerfully shaped by

65. Yochi Cohen-Charash & Paul E. Spector, *The Role of Justice in Organizations: A Meta-Analysis*, 86 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 278, 301 (2001).

66. See, DAVID DE CREMER, ADVANCES IN THE PSYCHOLOGY OF JUSTICE AND AFFECT, (2007); David De Cremer & Kees van den Bos, *Justice and Feelings: Toward a New Era in Justice Research*, 20 SOC. JUST. RES. 1 (2007); Craig A. Smith & Richard S. Lazarus, *Appraisal Components, Core Relational Themes, and the Emotions*, 7 COGNITION & EMOTION 233 (1993) (revealing that the experience of anger may result primarily from perceived injustice); ROBERT FOLGER, ORGANIZATIONAL JUSTICE AND HUMAN RESOURCE MANAGEMENT, (1998) (“[f]eeling unfairly treated by someone or some institution gives anger a direction, a target—namely a person or organization held accountable for the perceived injustice.”); Robert J. Bies, *The Predicament of Injustice: The Management of Moral Outrage*, in RESEARCH IN ORGANIZATIONAL BEHAVIOR (L.L. Cummings & Barry M. Staw eds., 1987); J.S. Adams, *Inequity in Social Exchange*, in ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY (L. Berowitz, ed., 1965) (arguing that inequity results in an unpleasant state of anger); GEORGE G.C. HOMANS, SOCIAL BEHAVIOR: ITS ELEMENTARY FORMS (1961) (injustice leads one to display negative emotion of anger).

whether procedural justice is afforded to the public.

Importantly, procedural justice is a powerful means of realizing the plural values that the civil justice system seeks to promote. As such, the extent to which members of the public experience justice within the civil justice system should be closely and continuously measured. Civil processes that afford procedural justice ultimately shape beliefs about whether the civil justice system is fair, legitimate, and just. Thus, how the public experiences the civil justice system powerfully shapes the basic sense of justice that the public expects and demands.

As a result, experiences of justice should be more explicitly woven into normative accounts that seek to improve the effectiveness of the civil justice system. Legal professionals, including judges and court administrators, should evaluate how the public experiences different legal processes and procedures.⁶⁷ Fundamentally, legal professionals must strive to avoid legal processes and procedures that erode the public's experiences of justice, regardless of whether these legal processes and procedures are arguably efficient.⁶⁸

Below, we contend that legal professionals can and should harness the diagnostic and feedback potential of experiences of justice when engaging in human-centered civil justice design. Legal professionals can and should measure and evaluate the public's experiences of justice as the public navigates the civil justice system. Moreover, when the public overwhelmingly negatively experiences a particular legal process or procedure as manifestly unjust civil justice designers should intervene. We must modify the legal environment by adopting legal procedures that dissipate the public's negative experiences and restore the public's fundamental experiences of justice. Our recommendation casts light on harnessing procedural justice as a means of advancing the aims and values of the civil justice system and has implications for judges and court administrators, a matter to which we now turn.

A. *Illuminating the Plural Effects of Procedural Justice on Process Values*

Considered with previous psychological science research, the experiment reported in Part II, casts light on a powerful means for advancing the plural aims and process values of the civil justice system. Research on procedural justice illuminates the plural ends of the civil justice system and offers an important means for selecting among different civil processes and dueling constructions of rules of civil procedure. When engaging in civil justice design, legal professionals should measure, evaluate, and ultimately incorporate the extent to which the public experiences proposed legal processes as legitimate and just. While efficiency is a desirable value, designing an effective civil justice system requires that we ensure the public experiences civil justice as fair, legitimate, and procedurally just.

To begin, one of the accepted ends of the civil justice system is *deterrence*. When debating the desirability of particular procedures, however, discussion often surrounds whether these procedures result in over or under-deterrence. The empirical legal study reported in Part II reveals that one of the plural effects of procedural justice is perceived legal accuracy. When procedural justice is withdrawn, perceptions of legal accuracy

67. See Cass R. Sunstein, *If People Would Be Outraged by Their Rulings, Should Judges Care?*, 60 STAN L. REV. 155 (2007); Kahan, *supra* note 52, at 898–99.

68. See MARTHA C. NUSSBAUM, *POLITICAL EMOTIONS, WHY LOVE MATTERS FOR JUSTICE* (2013).

diminish, whereas when procedural justice is afforded, perceptions of legal accuracy improve. This finding is important: according to Bentham's theory of deterrence, optimal levels of societal deterrence are driven by expectations about the efficacy and accuracy of legal process. Mainly, when the public believes that the civil justice system will accurately hold wrongdoers accountable, then optimal levels of societal deterrence are promoted. These expectations about legal accuracy, in turn, promote compliance with law. Secondly, some proposed procedures may arguably result in comparable levels of societal deterrence. In this scenario, civil justice designers should evaluate whether the public experiences one or more of the proposed procedures as unjust. For example, federal courts may choose to allow or deny oral arguments before ruling on a motion for summary judgment. In theory, either approach yields similar levels of societal deterrence. Yet depriving claimants of a voice and opportunity to be heard before granting summary judgment may result in experiences of procedural injustice and, therefore, threaten the perceived legitimacy of dispute resolution.

Another of the accepted ends of the civil justice system is *effectuation* values. Legal professionals often equate this aim with monetary relief.⁶⁹ While the basic economic model of litigation is informative and useful,⁷⁰ the model neglects litigant emotions and experiences. One of the plural effects of procedural justice is on perceived procedural effectiveness. That is, when the public experiences procedural injustice, the public perceives procedures as ineffective, whereas when the public experiences procedural justice, the public perceives procedures as effective. Here too, both *whether* legally cognizable rights are being enforced and *perceptions of whether* legally cognizable rights are being enforced by the civil justice system are significant. As Abrams has argued, emotions and the mobilization of rights are related.⁷¹ Indeed, naming, blaming, and claiming, and the dispute pyramid, can be conceived of in terms of emotions and experiences.⁷² Research on procedural justice offers a bases for understanding the dynamics of claiming behavior and how procedural rules affect the emotions that intersect with claiming behavior.⁷³ When evaluating the effectuation of rights, legal professionals should consider diminished perceptions of the ineffectiveness of process, negative emotions, and experiences of injustice that stem from being denied meaningful legal process and relief.

Our civil justice system also strives to promote *participation and dignity* values.⁷⁴ These twin aims reflect a deep humanistic appreciation for an engaged democracy that treats people with dignity and respect. These twin values also reflect concern for the psychological harm, humiliation, and loss of self-respect suffered when meaningful

69. See JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, *PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING* 209 (2012); Tamara Relis, "It's Not About the Money!" *A Theory of Misconceptions of Plaintiff's Litigation Aims*, 68 U. PITT. L. REV. 701 (2007).

70. Priest & Klein, *supra* note 34.

71. See Kathryn Abrams, *Emotions in the Mobilization of Rights*, 46 HARV. L. REV. 551 (2011).

72. *Id.* at 535; see also JENNIFER K. ROBBENOLT, et al., *THE PSYCHOLOGY OF TORT LAW*, 25, Chapter (2016).

73. Susan A. Bandes & Jessica M. Salerno, *Emotion, Proof and Prejudice: The Cognitive Science of Gruesome Photos and Victim Impact Statements*, 46 ARIZ. ST. L.J. 1003, 1006-09 (2014).

74. Michelman, *supra* note 5, 1173-75;

opportunities to redress harm are denied.⁷⁵ In the past, the primary difficulty of promoting these twin aims has been measuring and evaluating humanistic concerns, including the public's experiences of justice. This difficulty relates to philosophical tension between rationalism and empiricism.⁷⁶ Yet psychological science on procedural justice creates common ground between rationalism and empiricism by revealing powerful new empirical methods for measuring and evaluating experiences of justice. Importantly, the plural effects of procedural justice converge on a single underlying factor: fundamental experiences of justice. That is, when procedural justice is afforded the public experiences fundamental justice; when procedural justice is withheld, the public experiences fundamental injustice. Today, the methods are readily available for legal professionals to measure and evaluate whether proposed rules affect the twin aims of participation and dignity.

Another important process value is *efficiency*.⁷⁷ The difficulty, however, is that efficiency equates with diminishing the direct costs of court procedures and reducing delay, which can work at cross purposes with affording procedural justice.⁷⁸ These direct costs are borne by claimants, defendants, and the public, and any cost savings may inure to the benefit of all or only some of these interested parties. Reformists often contend that access to judicial forums should be scaled back to avoid undue direct costs (or the cost of defending against litigation). This contention unfortunately neglects whether members of the public experience this diminished civil justice as illegitimate and unjust. In this regard, the public resists cost savings if these cost savings require trading off procedural justice for procedural injustice.⁷⁹ Cheaper for some may not be experienced as fairer to most.

Legal professionals must be cautious when promoting efficiency (i.e., reducing direct costs or delays) in the civil justice system. Efficiency may conflict with procedural justice, perceived legitimacy, and civil justice effectiveness. For example, procedural justice shapes whether the public accepts judges, mediators, and courts as legitimate.⁸⁰ This perceived legitimacy is vital to a vibrant democracy: the legitimacy of legal institutions and promoting voluntary compliance with law and pro-social cooperation in an engaged democracy.⁸¹ This wellspring of legitimacy influences the public's willingness to comply with legal decrees. Accordingly, when the public reacts negatively to diminished processes, these negative reactions signal that a civil process is experienced as procedurally unjust. These experiences of procedural injustice suggest that the legitimacy of the civil justice system is being damaged. This loss of legitimacy is itself a cost and consequence that should be thoughtfully considered and avoided when engaging

75. *Id.* at 1172; Mashaw, *supra* note 7, at 50–51.

76. WILLIAM JAMES, PRAGMATISM: A NEW NAME FOR SOME OLD WAYS OF THINKING 4, 20 (2003) (“[I]n philosophy we have a very similar contrast expressed in the pair of terms “rationalist” and empiricist . . .”).

77. Posner, An Economic Approach to Legal Procedure, *supra* note 6, at 400–02.

78. Lisa Blomgren Amsler, et al., DISPUTE SYSTEM DESIGN: PREVENTING, MANAGING, AND RESOLVING CONFLICT (forthcoming on file with author); David A. Hoffman & Michael P. O’Shea, *Can Law and Economics Be Both Practical and Principled?*, 53 ALA. L. REV. 335, 380 (2002).

79. See generally Quintanilla, *Taboo Procedural Tradeoffs: Examining How the Public Experiences Tradeoffs Between Procedural Justice and Cost*, 15 NEV. L.J. 882 (2015).

80. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, *supra* note 11, at 379.

81. See *supra* Part I.B.1; see Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, *supra* note 12, at 379.

in efficient and effective civil justice design. Civil justice designers should consider the plural advantages of a procedurally just system, while at the same time considering the plural disadvantages of a procedurally unjust system, when evaluating ways of realizing cost and time efficiencies.⁸²

Moreover, procedural justice also advances the value of *equality*, which the civil justice system aspires to promote. Equality reflects concern with whether civil processes result in different outcomes to particular classes of parties. Drawing on John Rawl's *Theory of Justice*,⁸³ from behind a veil of ignorance, one would accomplish civil justice design that promotes overall experience of fairness and justice to all parties regardless of whether they ultimately receive favorable or unfavorable outcomes. From behind the veil of ignorance, one would know neither whether one is a plaintiff or a defendant, nor whether one's case will ultimately prevail. Hence, regardless of a party's outcome—favorable or unfavorable—procedural justice promotes perceptions of fairness and experiences of justice. That is, procedural justice improves experiences of fairness and justice to *both* plaintiffs and defendants, whether they ultimately succeed or not. *All* parties benefit when procedural justice is afforded. Secondly, procedural justice fostered the greatest collective good to the parties: the combined fairness to parties in the procedural justice condition was far greater ([Favorable: $M = 8.73$ + Unfavorable: $M = 4.81$] = 13.54) than the combined fairness to parties in the procedural injustice condition ([Favorable: $M = 4.39$ + Unfavorable: $M = 1.68$] = 6.07). Similarly, the combined overall experience of justice to parties in the procedural justice condition was far greater ([Favorable: $M = 6.51$ + Unfavorable: $M = 3.43$] = 9.94) than the combined overall experience of justice to parties in the procedural injustice condition ([Favorable: $M = 3.83$ + Unfavorable: $M = 1.73$] = 5.56). Further, when disputes are pending within the civil justice system, all parties benefit from increased procedural justice. In marked contrast, when special interest groups advocate procedures that are experienced as procedurally unjust to skew results in their favor, this form of civil justice reform fails the test of equality.

In sum, legal culture should harness psychological science on procedural justice as an important means to promote the plural ends of the civil justice system when selecting among civil processes, rules of procedure, and dueling constructions of rules. While *efficiency* is desirable, procedural justice is vital for achieving an *effective* civil justice system. Chiefly, when selecting between legal procedures, civil justice designers should measure and evaluate the public's experiences of justice. We must strive for fair and appropriate legal procedures that are procedurally just and which diminish experiences of procedural injustice.

B. *Implications for Judges and Court Administrators*

Our legal culture should reflect professionalism in civil justice design that seeks to openly and transparently reconcile the different plural values of the civil justice system and stakeholder concerns. Judges and court administrators should not promote a legal culture that strives only for efficiency—they should promote a legal culture that attends to

82. For a general discussion of the importance of procedural justice, see Lind & Tyler, *Procedural Justice*, *supra* note 17.

83. See JOHN RAWLS, A THEORY OF JUSTICE 136 (1971).

the procedural justice afforded by formal and informal civil processes and how these civil processes influence experiences of justice.⁸⁴ Courts should be mindful of the public's experiences of procedural justice and harness empirical methods to evaluate how features of formal procedures and informal practices shape the public's experience, including experiences of justice. As David B. Rottman of the National Center for State Courts ("NCSC") has argued, procedural fairness is the "organizing theory for which twenty-first century court reform has been waiting."⁸⁵ In this regard, we offer two recommendations below: first, on the judge's role for handling individual cases; and second, on judges' and court administrators' responsibility to evaluate and improve upon the public's justice-related experiences across cases.

Doubtless, courts must ensure that the public experiences dispute-handling procedures as fair and adopt procedures that afford litigants respect. In each adjudicated case, courts should attend to the interpersonal dimensions of dispute resolution to promote experiences of justice. Courts should, therefore, actively and mindfully appraise and monitor the experiences of disputants across cases. Judges and court administrators can lend litigants and courthouse visitors the opportunity to evaluate their experiences before leaving the courthouse.⁸⁶ Courthouse administrators can evaluate the tone of public interaction set in their courthouses, as Minnesota courts have done for a number of years.⁸⁷ Court administrators, moreover, can partner with researchers to conduct collaborative projects to assess procedural fairness in courts. In this regard, the NCSC has designed and made available an excellent survey tool that measures experiences of access and fairness.⁸⁸ California's and Utah's recent court assessment projects on trust and confidence are excellent examples.⁸⁹

Above all, when courts become aware that a wide swath of litigants experience a particular rule or practice as unjust, this should prompt discussion on judicial committees of whether intervention, such as by altering a procedural rule or process, is called for. To begin, we should encourage judicial training on the psychology of procedural justice and how to attend to experiences of justice. Capacities such as empathy can be learned, developed, and refined.⁹⁰ Courts should be trained on how to perceive, interpret, and appraise the experiences of litigants.⁹¹ Courts, for example, can be trained in mindfulness practices, which over the past three decades have been recognized for the ability to reduce

84. See generally Bettina Lange, *The Emotional Dimension in Legal Regulation*, 29 J.L. & SOC'Y 197 (2002).

85. David B. Rottman, *Procedural Fairness as a Court Reform Agenda*, 44 CT. REV. 32 (2007).

86. Burke & Leben, *supra* note 134, at 20.

87. *Id.* at 19.

88. See National Center for State Courts, *Trial Court Performance Measures*, COURTOOLS (2005), <http://www.courttools.org/Trial-Court-Performance-Measures.aspx>.

89. See Denton, *supra* note 134, at 44; David B Rottman et al., *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys, Part I: Findings and Recommendations* (2005), http://www.courts.ca.gov/documents/4_37pubtrust1.pdf; Steve Leben, *Considering Procedural-Fairness Concepts in the Courts of Utah* (2011), <http://www.proceduralfairness.org/Resources/~media/Microsites/Files/procedural-fairness/Utah%20Courts%20and%20Procedural%20Fairness%2009-2011.ashx>.

90. See Bandes & Blumenthal, *Emotion and the Law*, 8 ANN. REV. L. & SOC. SCI. 161, 171–72; Norma Deitch Feshbach and Seymour Feshbach, *Empathy and Education*, THE SOCIAL NEUROSCIENCE OF EMPATHY 85 (Jean Cecety & William Ickes ed., 2009).

91. See Bandes & Blumenthal, *supra* note 144, at 172–75; Russell H. Fazio & Michael A. Olson, *Implicit Measures in Social Cognition Research: The Meaning and Use*, 54 ANN. REV. PSYCHOL. 297, 300–01 (2003).

psychological distress.⁹² In short, courts interact with the public day in and day out; thus, courts have the responsibility not only to decide individual cases at bar, but to collect and improve the workings of the civil justice system by actively monitoring the public's experiences of procedural justice.

For federal courts these best practices are even more urgent and necessary. Chief Justice Roberts construes Rule 1 as imposing an express obligation on judges, lawyers, and clients to work cooperatively to control the expense and time demands of litigation.⁹³ This will doubtless entail difficulty. Courts must remain vigilant to ensure that procedural justice is the primary experience that is achieved by Rule 1, and that concerns for prompt and efficient dispute resolutions do not come at the expense of ensuring that parties feel that they have been treated fairly, legitimately, and justly.

Moreover, judges will need to be vigilant about how they employ Rule 16 when resolving pre-trial motions. Chief Justice Roberts remarked, “[a] well-timed scowl from the trial judge can go a long way to moving things along crisply.” The difficulty is that the well-timed scowl can also lead to experiences of procedural injustice and erode legitimacy. Again, a healthy vigilance for experiences of justice is necessary.

C. *Human-Centered Design and Managerial Judging*

Human-centered design thinking seeks to deeply understand the people one intends to serve. Design thinkers consider the behavior, environments, and psychology of their intended beneficiaries. This approach to problem solving examines solutions with respect to three criteria: technological *feasibility*, financial *viability*, and *desirability* of the solution to the community's stakeholders.⁹⁴ Problem solving using human-centered design consists of three stages: *inspiration* (the opportunity motivating change); *ideation* (brainstorming and prototyping); and *implementation* (wherein the best ideas are scaled up and put into a concrete plan of action).⁹⁵ By utilizing human-centered design principles when engaging with the civil justice system, designers, administrators, and judges can reconcile tensions and serve the plural ends of the civil justice system.

These plural ends along with the plural effects of procedural justice have broad implications for a variety of facets of civil justice. In particular, the principles of human-centered civil justice design have much to do with the practice of managerial judging.⁹⁶ The federal judicial role has shifted over time from an adversarial model in which judges serve as impartial arbiters, to a quasi-inquisitorial model in which judges deploy bureaucratic logics of efficiency, speed, cost, calendars, and disposition statistics.⁹⁷ As

92. See Norman A.S. Farb et. al, *Mindfulness Interventions and Emotion Regulation*, HANDBOOK OF EMOTION REGULATION, 204–226 (James J. Gross, ed., 2007).

93. See C.J. Roberts, 2015 YEAR-END REPORT OF THE FEDERAL JUDICIARY (2015).

94. Tim Brown, CHANGE BY DESIGN (2009); IDEO, FIELD GUIDE TO HUMAN CENTERED DESIGN (2015).

95. Brest, Roumani & Bade, *Problem Solving, Human-Centered Design, and Strategic Processes*, STAN. CTR. ON PHILANTHROPY AND CIV. SOC'Y (2015), <http://paccenter.stanford.edu/wp-content/uploads/2015/09/Download-the-full-article-here.pdf>.

96. See Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 376 (1982); Robert F. Peckham, *The Federal Judge as a Case Manager: The New Role in Guiding a Case from Filing to Disposition*, 69 CAL. L. REV. 770 (1981); Steven S. Gensler, *Judicial Case Management: Caught in the Crossfire*, 60 DUKE L.J. 669 (2010).

97. See Thomas D. Rowe, Jr., *Authorized Managerialism Under the Federal Rules—and the Extent of Convergence With Civil-Law Judging*, 36 SW. U. L. REV. 191, 193–202 (2007).

Steven Yeazell has noted, “Courts now devote the bulk of their civil work to such pretrial tasks: ruling on discovery disputes, deciding joinder issues, conducting pretrial and settlement conferences, and sadly, punishing lawyers for misbehavior during the phase.”⁹⁸

Federal judges have wide discretion when carrying out their role as managerial judges and interacting with parties and their lawyers, but the constraints that circumscribe this power are largely absent.⁹⁹ Indeed, there are no explicit standards, norms, or criteria that guide judges in how to engage in managerial judging.¹⁰⁰ Further, given the ubiquity of settlements, interim decisions are often unreviewable as there is no final decision, and these interim decisions are conducted out of reach of appellate review.¹⁰¹ Even if these decisions were reviewable, another difficulty is that managerial judging lacks transparency: active case management occurs out of public view, off record, and judges are not obligated to offer written decisions.¹⁰² Finally, because of its unreviewable nature and lack of transparency, managerial judging is more likely to be affected by partiality and bias. In its less pernicious form, prior decisions by judges in the pretrial process may shape their later judgments.¹⁰³ In its more pernicious form, managerial judging is a fertile field for the growth of personal bias.¹⁰⁴

Even at its most innocuous, when federal judges engage in active case management, they encounter tension over the different procedural values that our civil justice system seeks to advance. While reducing delay and unnecessary expense are doubtless important when bureaucratically processing pretrial disputes, the caveat is that the criterion of efficiency is subordinate to the demand of an effective civil justice system that delivers justice. The experiment described in Part III, and research on procedural justice more generally, reveals that by affording the parties procedural justice, managerial judges advance the plural ends of the civil justice system.

Procedurally just managerial judging has benefits that extend beyond the courtroom as well. Professor Tom Tyler has argued that securing the public’s self regulation and compliance through legitimate and fair procedures is more effective and requires less

98. See Stehen C. Yeazell, *The Misunderstood Consequences of Modern Civil Process*, 1994 WIS. L. REV. 631, 639 (1994).

99. See Resnik, *supra* note 96, at 378, 425.

100. See *id.* at 426. For example, the Federal Courts Study Committee, noted that “[t]here are no standards for making these ‘managerial’ decisions, the judge is not required to provide a ‘reasoned justification,’ and there is no appellate review. Each judge is free to consult his or her own conception of the importance and merit of a case and the proper speed with which it should be disposed. This in turn promotes arbitrariness.” 1 FED. CTS. STUDY COMM., WORKING PAPERS AND SUBCOMMITTEE REPORTS 30 (1990).

101. See Resnik, *supra* note 96, at 378, 430.

102. *Id.* at 378, 425.

103. *Id.* at 427–28; Lon L. Fuller, *The Adversary System*, in TALKS ON AMERICAN LAW 43 (Harold J. Berman 2d ed. 1971) (“[N]onadversarial systems are objectionable because the decision-maker may reach a conclusion at an early stage and . . . adhere to that conclusion in the face of conflicting considerations later developed.”). See also Craig A. Anderson, *Belief Perseverance*, in ENCYCLOPEDIA OF SOCIAL PSYCHOLOGY (Roy F. Baumeister & Kathleen D. Vohs eds., 2007); RICHARD E. NISBETT & LEE ROSS, HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT (1980); Charles G. Lord, Less Ross & Mark R. Lepper, *Biased Assimilation and Attitude Polarization: The Effects of Prior Theories on Subsequently Considered Evidence*, 37 J. PERSONALITY & SOC. PSYCHOL. 2098 (1979); Barbara O’Brien, *Prime Suspect: An Examination of Factors That Aggravate and Counteract Confirmation Bias in Criminal Investigations*, 15 PSYCHOL. PUB. POL’Y, & L. 315 (2009).

104. See MALCOLM FEELEY, THE PROCESS IS THE PUNISHMENT (1979).

resources than the traditional model of surveillance and punishment.¹⁰⁵ Tyler's research has revealed that an individual's belief in the legitimacy of rules ("legitimacy") is more important to her decision on whether to follow those rules than the perceived risk of punishment, and similarly that an individual's internalization of those rules as personal moral values ("morality") is far more likely to prompt rule abiding behavior than the risk of punishment.¹⁰⁶ The elements of procedural justice, (voice, neutrality, respect, and trust) are the source of legitimacy and morality.¹⁰⁷ Tyler has demonstrated that the key factor shaping both long and short term compliance with legal rules is the fairness of the processes used by authorities when dealing with the public.¹⁰⁸

Beyond compliance, just procedures also advance the plural process values of the civil justice system. The way in which people are treated by authorities, such as judges and court personnel, communicates relational information, such as their degree of inclusion within society and their social status.¹⁰⁹ Specifically, procedurally just treatment communicates an individual's right to come to court and that they will have their needs and concerns taken seriously by the authorities.¹¹⁰ Fair procedures communicate that litigants are respected and treated with dignity.¹¹¹ This relational information is valuable, independent of outcomes.¹¹² While outcomes might be indeterminate or variable, how parties should be treated is much more concrete.¹¹³ Even in the face of adverse outcomes, procedurally fair treatment has a significant effect on subsequent behavior.¹¹⁴ While courts are unable to control whether any given litigant will ultimately receive a favorable decision, courts can nonetheless afford litigants with meaningful process that makes dispute resolution less painful—meaningful process that is experienced as just.

In sum, when managerial judges administer the pretrial process of disputes, they should consider the public's experiences of justice. For their part, federal judges must do their utmost to infuse their pretrial interactions with disputants and their lawyers with procedural justice. We must strive for fair, appropriate pretrial interactions with the public and legal procedures that are procedurally just and that diminish experiences of procedural injustice. Moreover, managerial judges should consider the effects of their pretrial decisions on the experiences of justice that the disputants are likely to obtain, especially if these decisions tradeoff time, cost, and experiences of justice. Judges must be vigilant about the quality of their managerial judging, not simply the quantity or speed of cases processed.¹¹⁵ This human-centered approach to managerial judging is deeply consistent

105. See Tyler, *supra* note 12.

106. *Id.* at 31.

107. *Id.* at 33–45.

108. Tom Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283, 292 (2003).

109. Tracey L. Meares & Tom R. Tyler, *Justice Sotomayor and the Jurisprudence of Procedural Justice*, 123 YALE L.J. F. 525, 535 (2014).

110. *Id.*

111. *Id.* at 536

112. *Id.* at 527–28.

113. *Id.*

114. Raymond Paternoster et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 LAW & SOC'Y REV. 163 (1997).

115. See Resnik, *supra* note 96, at 426.

with the ethos of most judges who wish to treat the public with dignity and respect and to deliver meaningful access to justice.

CONCLUSION

Our legal culture should expansively embrace a plural view of the values and goals of the civil justice system, emphasizing psychological science on procedural justice as an important means of advancing these plural values. Our legal culture should balance plural values, including a concern for efficiency, while carefully addressing the public's experience of justice in particular civil justice contexts. Ultimately, the public's experiences of procedural justice and injustice should be measured, evaluated, and taken into account when selecting among different processes and dueling constructions of procedural rules that seek to advance the ends of the civil justice system.

In closing, we have drawn on the field of psychological science and experimental methods to examine the plural effects of procedural justice. This study experimentally examined the effect of procedural justice on experiences and perceptions of *overall fairness*, *outcome satisfaction*, *positive emotions*, *negative emotions*, *legal accuracy*, *effectiveness of process*, and *legitimacy*. Consistent with prior literature and our theory—and across all dependent measures—when procedural justice was withheld, irrespective of the favorability of the outcome obtained, this procedural injustice diminished perceptions and experiences of overall fairness, outcome satisfaction, positive and negative emotions, legal accuracy, effectiveness of process, and legitimacy. Conversely, when members of the public were afforded procedural justice, their perceptions and experiences of these dimensions rose. Although outcomes mattered, procedural justice influenced experiences separate and apart from the outcomes of these disputes. Further, these plural effects converged on an underlying factor—a fundamental experience of justice.¹¹⁶ Finally, the extent to which an outcome is experienced as *just* (*i.e.*, a “just result” or outcome satisfaction) is powerfully influenced by the procedural justice afforded when resolving a dispute. As such, procedural justice is an important means of manifesting the plural values that the civil justice system seeks to promote. Moreover, the study reveals the importance of closely and continuously examining the extent to which members of the public experience justice within the civil justice system. Civil justice processes that afford procedural justice shape evaluations of fairness, accuracy, effectiveness, and—downstream further still—ultimately shape beliefs about whether our civil justice system is legitimate and just. How the public experiences the civil justice system powerfully shapes the basic justice that the public expects and desires.

As John Stuart Mill observed in the final words of his magnum opus,

Justice remains the appropriate name for certain social utilities which are vastly more important, and therefore more absolute and imperative, than any others are as a class; . . . and which, therefore, ought to be, as well as naturally are, guarded by a sentiment not only different in degree, but also in kind; distinguished from the milder feeling which attaches to the mere idea of promoting human pleasure or convenience, at once by the

116. See *supra* Part II.C.2.

more definite nature of its commands, and by the sterner character of its sanctions.¹¹⁷

In the final calculus, our legal culture must embrace a plural perspective of the values and aims advanced by the civil justice system, one that accords weight to the American public's experiences of justice.

117. MILL, *supra* note 46, at 476.