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THE RELATION BETWEEN PROCEDURAL AND DISTRIBUTIVE JUSTICE*

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I. INTRODUCTION

WE present in this article the first comprehensive report of our research into the impact of variations in procedure on the perceived justice of the outcome of litigation. The information was collected in two closely related studies, employing the laboratory methodology of social psychology. These studies constitute our first effort to collect systematic, empirical evidence regarding the relationship between procedural and distributive justice.[1] Our major concern in the studies we report here, and in a program of empirical and theoretical studies conducted over the last eight years, is the perception of fairness in legal dispute resolutions.[2] We

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[1] Up to the present, our research has been concerned almost exclusively with procedural justice. *See* J. THIBAUT & L. WALKER, PROCEDURAL JUSTICE (1975). *See also* Houlden, LaTour, Walker & Thibaut, *Preference for Modes of Dispute Resolution as a Function of Process and Decision Control*, 14 J. EXPERIMENTAL SOC. PSYCH. 13 (1978); LaTour, Houlden, Walker & Thibaut, *Procedure: Transnational Perspectives and Preferences*, 86 YALE L.J. 258 (1976); Thibaut & Walker, *A Theory of Procedure*, 66 CALIF. L. REV. 541 (1978).

[2] As we emphasize in the text by our frequent use of such words as "perceived," "felt," and "believed," our concern here is with *subjective* justice. Several of our earlier studies dealt with psychological factors in procedure that might affect the *objective* outcome of a case. *See* Lind, Thibaut & Walker, *A Cross-cultural Comparison of the Effect of Adversary and Inquisitorial Processes on Bias in Legal Decisionmaking*, 62 VA. L. REV. 271 (1976); Lind, Thibaut

have sought to discover the factors and processes that contribute to beliefs, on the part of individuals in various roles and situations, that what has occurred in a trial is fundamentally fair and satisfying.

Two general types of perceived fairness can be distinguished: "procedural justice," the belief that the techniques used to resolve a dispute are fair and satisfying in themselves; and "distributive justice," the belief that the ultimate resolution of the dispute is fair. Let us briefly consider each of these concepts of fairness and then the possible relationships between the two.

We can characterize the perception of procedural justice as the individual's belief that the trial of a legal dispute has followed "due process." Our previous studies have shown that different procedures produce differences in the feelings of fairness that they engender.[3] These studies have revealed a pervasive inclination to view adversary, disputant-controlled procedures as more fair than nonadversary decisionmaker-controlled procedures. On the basis of such findings we have theorized that adversary procedures are believed to promote consideration of the particular situations and circumstances of disputing parties, and that this is viewed as a basic requirement of maximally fair dispute resolutions.[4]

By the term "distributive justice" we mean the individual's belief that the outcome of a dispute is fair and equitable, that it is deserved. Social scientists have extensively analyzed issues in this area, focusing particularly on such questions as the relationship between an individual's contributions to a transaction and the outcomes that are perceived as fair for that individual.[5] The application of these analyses to the trial situation suggests that, while individuals are inclined to view positive outcomes as more satisfactory than negative outcomes, the satisfaction that a judgment or award engenders depends also on beliefs about what the individual receiving the judgment deserves.[6] Even positive awards may be considered

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& Walker, *Discovery and Presentation of Evidence in Adversary and Nonadversary Proceedings*, 71 MICH. L. REV. 1129 (1973); Thibaut, Walker & Lind, *Adversary Presentation and Bias in Legal Decisionmaking*, 86 HARV. L. REV. 386 (1972).

[3] *See* note 1 *supra*.

[4] *See* Thibaut & Walker, *supra* note 1, at 551-52.

[5] *See generally* G. HOMANS, SOCIAL BEHAVIOR: ITS ELEMENTARY FORMS 241-68 (rev. ed. 1974); Adams, *Inequity in Social Exchange*, in 2 ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY 267 (1965).

[6] *See* G. LEVENTHAL, FAIRNESS IN SOCIAL RELATIONSHIPS (1976); E. WALSTER, G. WALSTER & E. BERSCHEID, EQUITY THEORY AND RESEARCH (1978).

unfair if it is believed that the individual deserves more or less in view of his contribution to the transaction from which the dispute arose.[7]

In this article we seek to discover what relationship, if any, exists between these two types of justice-oriented reactions to trials: how does the belief that a trial *procedure* is fair affect the belief that the trial *outcome* is fair? Several relationships seem possible. First, perceptions of procedural justice may influence perceptions of distributive justice. An assumption of this influence implicitly underlies any attempt to improve through procedural reform the general quality of perceived justice. Procedure becomes not merely a means to the end of distributive justice, but a means that profoundly affects the psychological meaning of that end. If this is the actual relationship between the two types of justice, we would expect that procedures rated highly on a procedural justice continuum would enhance the perceived fairness and acceptability of the outcomes those procedures yield.

A second possibility is that perceptions of distributive justice may influence perceptions of procedural justice. To expect those involved in legal disputes to judge the fairness of the procedure and of the system by the fairness of the outcomes is to assume this relationship. If this assumption accurately describes the relationship between perceptions of the two types of justice, we would not expect procedural reform to enhance the perceived fairness of outcomes; rather, procedural "improvements" themselves would be viewed as "fairer" only to the extent that they succeeded in producing fairer results.[8]

A third possible relationship between perceptions of procedural and distributive justice is the null case of no relationship whatsoever. That is, there is no necessity that beliefs concerning either type of justice affect beliefs about the other. Although normally people are expected to be consistent in their beliefs, they often are not. It is certainly conceivable, for example, that an individual could believe that the procedure used in a case was fair and at the

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[7] *See* Austin & Walster, *Reactions to Confirmations and Disconfirmations of Expectancies of Equity and Inequity*, 30 J. PERSONALITY & SOC. PSYCH. 208 (1974).

[8] Indeed, if we further assume, cynically, that individuals evaluate distributive justice primarily on the basis of favorable or adverse outcomes, we will be forced to conclude that efforts to enhance perceptions of justice through procedural reform are futile: those who win their cases will believe that both outcome and procedure were fair, while those who lose will believe the reverse.

same time feel no compulsion to believe that the outcome of the case was fair.[9]

Thus there are several relationships that *might* exist between perceptions of procedural justice and perceptions of distributive justice. It is in precisely this sort of situation, when several different conclusions appear theoretically reasonable, that empirical research can be most useful in testing which of the competing conclusions are in line with actual behavior and perceptions. Before we describe the studies we employed to test these possible relationships, we must consider the point of view of persons evaluating procedures and consequent outcomes.

It seems likely that the relationship between procedural and distributive justice depends in part on the perspective of the person making the fairness judgment. In structuring our inquiry, we therefore identified three nonprofessional roles in which individuals typically experience litigation and examined the relationship between procedural and distributive justice from the perspective of persons in each category.

The first perspective, that of persons who personally participate in the decisionmaking process and for whom outcomes are determined by the result of that process, is analogous to that of the parties in traditional civil and criminal litigation. Although our earlier investigations studied the ways in which different procedures affected such persons' perceptions of fairness in litigation, the focus of those experiments related almost exclusively to the process itself rather than to the outcome of the decisionmaking experience. In other words, subjects in most of the earlier studies were asked whether the *process* was fair and acceptable and whether it provided an opportunity for full participation; typically they were not asked whether they perceived the *outcome* of the decisionmaking session favorably.[10]

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[9] Although the relationships outlined above appear to be the most salient possibilities, we can imagine others. One of these entails a "boomerang effect" that might produce lower perceptions of distributive justice when high procedural justice is present. This would result from high expectations on the part of those experiencing a fair procedure. Outcomes, whether favorable or unfavorable, would not be experienced as quite so fair or satisfactory as would the same outcomes when experienced by less hopeful participants. Another possible relation would be that of a "statistical interaction" between procedure and outcome. This would obtain if, for example, a disputant judged an outcome delivered through a fair procedure to he more fair than one delivered through an unfair procedure only when the outcome was favorable.

[10] The focus of our earlier investigations was founded on a judgment, still held, that process

The second perspective adopted was that of persons who do not participate directly in the decisionmaking process, but for whom outcomes nevertheless are determined by the process. This group initially may seem a less significant subject of study than our first category, but we suggest that a large number of persons experience litigation in this way. The most distinctive feature of the class action device, for example, is its ability to bind persons to outcomes even though they did not participate directly in the litigation.[11] Recent developments indicate that in the future a growing number of "nonparticipants" may find themselves bound by the results of litigation, both through greater availability of the class action device[12] and through new applications of the doctrine of collateral estoppel.[13] Of course, a variety of more traditional rules and

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itself has independent value. *See* Summers, *Evaluating and Improving Legal Processes—A Plea for "Process Values,"* 60 CORNELL L. REV. 1 (1974). More recently, however, we have come to believe that perhaps an even more important question is the relation of decisionmaking procedures to the perceived justice of the result in litigation. Two of our earlier studies dealt incidentally with outcome satisfaction. *See* LaTour, *Determinants of Participant and Observer Satisfaction with Adversary and Inquisitorial Modes of Adjudication,* 36 J. PERSONALITY & SOC. PSYCH. 1531 (1978); Walker, LaTour, Lind & Thibaut, *Reactions of Participants and Observers to Modes of Adjudication,* 4 J. APPLIED SOC. PSYCH. 295 (1974). Outside the domain of litigation, we also have addressed both process and outcome acceptance. *See* Thibaut, Friedland & Walker, *Compliance with Rules: Some Social Determinants,* 30 J. PERSONALITY & SOC. PSYCH. 792 (1974). *See also* Folger, *Distributive and Procedural Justice: Combined Impact of "Voice" and Improvement on Experienced Inequity,* 35 J. PERSONALITY & SOC. PSYCH. 108 (1977).

[11] *See* 7a C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1789 (1972); Freeman, *Current Issues in Class Action Litigation,* 70 F.R.D. 251, 286 (1976). *See also* Maraist & Sharp, *Federal Procedure's Troubled Marriage: Due Process and the Class Action,* 49 TEX. L. REV. 1 (1970).

[12] S. 3475, 95th Cong., 2d Sess. (1978), if adopted, would create a "public action" suit providing for public redress of numerous, small monetary injuries (less than $300) without proof of individual damages and without prejudgment notice to class members. It also would create a "class compensatory" suit intended to simplify the management of the present rule 23(b)(3) class suit, making it less expensive and time consuming.

Class action litigation also may become more readily available in state courts. The Uniform Class Action Act incorporates a number of features that, if adopted, would encourage wider use of the mechanism. For example, the Act's guideline for class certification is broad and permissive in character: courts are to "give appropriate weight" to 13 generally stated criteria in deciding whether or not to certify. *See* UNIFORM CLASS ACTION ACT § 3. The Act's notice requirements are flexible, leaving the manner and form of notice to judicial determination based on a number of general factors. *See id.* § 7(c). Moreover, the Act does not require personal or mailed notice for those class members whose recovery or liability is estimated to be $100 or less. *See id.* § 7(d).

[13] Some courts have shown a willingness to extend the doctrine so as to determine in some cases the interests of persons not parties to the litigation. *See, e.g.,* Cauefield v. Fidelity & Cas. Co., 378 F.2d 876 (5th Cir.), *cert. denied,* 389 U.S. 1009 (1967); *In re* Air Crash Disaster, 350 F. Supp. 757 (S.D. Ohio 1972), *rev'd sub nom.* Humphreys v. Tann, 487 F.2d

relationships also may result in litigation that determines the interests of persons other than direct participants.[14]

The third identified category consisted of persons who do not directly participate in litigation and for whom outcomes are not affected by the result. This perspective is analogous to that of the public with respect to instances of civil and criminal adjudication. The substantial number of persons in this category is clear and the importance of their perspective is widely acknowledged. Roscoe Pound's 1906 address to the American Bar Association, "The Causes of Popular Dissatisfaction with the Administration of

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666 (6th Cir. 1973), *cert. denied*, 416 U.S. 956 (1974); Friedenthal v. Williams, 271 F. Supp. 524 (E.D. La. 1967), *aff'd per curiam*, 395 F.2d 202 (5th Cir. 1968). *See also* Vincent v. Peter Pan Bakers, Inc., 182 Neb. 206, 208, 153 N.W.2d 849, 850 (1967) (dicta). Commentators generally have supported this development. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 111 (Tent. Draft No. 4, 1977); Vestal, *Res Judicata/Preclusion: Expansion*, 47 S. CAL. L. REV. 357 (1974); Note, *Collateral Estoppel of Nonparties*, 87 HARV. L. REV. 1485 (1974); Note, *The Expanding Scope of the Res Judicata Bar*, 54 TEX. L. REV. 527 (1976); Comment, *Nonparties and Preclusion by Judgment: The Privity Rule Reconsidered*, 56 CALIF. L. REV. 1098, 1119-21 (1968); 40 J. AIR L. & COM. 551 (1974).

[14] The beneficiary of a trust is bound by litigation conducted by the trustee, though the beneficiary did not directly participate. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 85 (Tent. Draft No. 2, 1975); G. BOGERT, TRUSTS AND TRUSTEES §§ 593, 594 (2d ed. 1960); F. JAMES & G. HAZARD, CIVIL PROCEDURE § 11.27, at 585 (2d ed. 1977); 1B MOORE'S FEDERAL PRACTICE ¶ 0.411[1], at 1256, ¶ 0.411[12], at 1672 & n.25 (2d ed. 1965). The same is true with respect to beneficiaries and litigation carried on by an executor, an administrator, *see* RESTATEMENT (SECOND) OF JUDGMENTS § 85 (Tent. Draft No. 2, 1975); F. JAMES & G. HAZARD, *supra*, § 11.27, at 586; 1B MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.411[12], at 1672 & n.27, a guardian, *see* RESTATEMENT (SECOND) OF JUDGMENTS § 85 (Tent. Draft No. 2, 1975); F. JAMES & G. HAZARD, *supra* § 11.27, at 586; 1B MOORE'S FEDERAL PRACTICE, *supra* ¶ 0.411[1], at 1256, ¶ 0.411[12], at 1672 & n.24; Vestal, *Preclusion/Res Judicata Variables: Parties*, 50 IOWA L. REV. 27, 61 & n.127 (1964), a conservator, *see* RESTATEMENT (SECOND) OF JUDGMENTS § 85 (Tent. Draft No. 2, 1975), or any fiduciary manager, *see* 1B MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.411[1], at 1251; *Developments in the Law—Res Judicata*, 65 HARV. L. REV. 818, 857 (1952).

In a community property state with an "equal management" provision, if either the husband or the wife brings suit the other may be bound, even though he or she did not participate. *See* RESTATEMENT (SECOND) OF JUDGMENTS § 85 (Tent. Draft No. 2, 1975); Cross, *Equality for Spouses in Washington Community Property Law—1972 Statutory Changes*, 48 WASH. L. REV. 527, 545-46 (1973). Litigation by an ancestor concerning a property interest will bind the heir who succeeds to the interest. F. JAMES & G. HAZARD, *supra*, § 11.29, at 592; 1B MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.411[12], at 1672; *Developments in the Law—Res Judicata, supra*, at 860 & n.318; Comment, *supra* note 13, at 1106. Litigation by an assignor will bind an assignee. RESTATEMENT (SECOND) OF JUDGMENTS § 90 (Tent. Draft No. 3, 1976); 1B MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.411[12], at 1668 & n.16; *Developments in the Law—Res Judicata, supra*, at 860 & n.318; Comment, *supra* note 13, at 1106. Litigation by a bailor or a bailee witb respect to the bailed property may preclude the other from bringing suit. RESTATEMENT (SECOND) OF JUDGMENTS § 87 (Tent. Draft No. 2, 1975); F. JAMES & G. HAZARD, *supra*, § 11.29, at 592; 1B MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.411[12], at 1673 & n.33; Comment, *supra* note 13, at 111-15.

Justice,"[15] is probably the most famous expression of concern over public perceptions of the courts. Continuing professional and scholarly recognition of the significance of public opinion in this area is reflected by the convening, in 1976, of the National Conference on the Causes of the Dissatisfaction with the Administration of Justice.[16]

In the following pages we will describe our investigation of the relationship between procedural and distributive justice. We first report the method of our studies, then their results, and finally we discuss the implications of our findings and their application to several current policy questions regarding the legal process.

II. METHOD

The research was conducted at two sites: the University of North Carolina at Chapel Hill and the University of Virginia. The subjects at both sites were undergraduate student volunteers.

A. The North Carolina Study

The North Carolina procedure was similar to that used in two of the earlier studies mentioned above,[17] which focused mainly on perceptions of process. One hundred and ten subjects, intended to be analogous to parties in traditional civil and criminal litigation, participated in groups of three subjects and one confederate. Subjects were told that they would participate in a large-scale business simulation, the first phase of which would involve a competitive advertising task. Out of each group of four, two advertising companies would be created, each consisting of a company president and a creative

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[15] 9 A.B.A. REP. 395 (1906), *reprinted in* 35 F.R.D. 241, at 273 (1964). Pound attributed much of the popular distrust of the legal process to the adversary model of decisionmaking. *See id.* at 404-06, 35 F.R.D. at 281. His address eventually provoked considerable reform activity. *See* Wigmore, *Roscoe Pound's St. Paul Address of 1906: The Spark that Kindled the White Flame of Progress*, 20 J. AM. JUD. SOC'Y 176 (1937).

[16] The addresses delivered at the conference are reported at 70 F.R.D. 79 (1976). Chief Justice Burger opened the conference with an address expressing profound concern over the public's perception of justice. *See id.* at 83-96. For other expressions of concern, *see* Fremlin, Frank & Pevna, *A Positive Public Image of the Courts*, 58 A.B.A. J. 390 (1972); Jones, *Law and the Behavioral Sciences: The Case for Partnership*, 47 J. AM. JUD. SOC'Y 109, 110, 113 (1963); *The Courts, the Public and the Law Explosion: The Final Report of the 27th American Assembly*, 49 J. AM. JUD. SOC'Y 16 (1965).

[17] *See* LaTour, *supra* note 10; Walker, LaTour, Lind & Thibaut, *supra* note 10.

For a discussion of the utility of simulation research in developing basic concepts, see Lind & Walker, *Theory Testing, Theory Development, and Laboratory Research on Legal Issues*, 3 J. L. & HUMAN BEHAVIOR 5 (1979).

director. The president and creative director of each company were to be separated and would communicate through headphones. In fact, all subjects were assigned to be president of the same company, and the experimental accomplice served as the creative director for each of the three subjects.

The advertising task described required each pair of companies to compete for an advertising contract that would pay both the president and the creative director of the winning company four dollars and the chance to proceed further in the simulation. The creative directors were to think of names for a set of twenty products and transmit these names to the company president via the headphones. The company president then would decide how to advertise each of the products, and the company whose list of product names was judged to be most creative would win the advertising competition.

Each subject was informed that at some point his creative director might have an opportunity to listen to the opposing company's creative director sending names to the opposing president. A system of colored lights would apprise him of espionage activity by his creative director. Although the lights clearly indicated to the subjects that no espionage in fact occurred,[18] all subjects were told that the opposing president had made a charge of spying and that a short trial would be held to resolve the dispute.

Fifteen minutes were allowed for preparation of evidence, and then each subject was reminded of the implications of the trial and escorted to a room that was arranged for a simple hearing. Depending on the procedural variation, the trial then proceeded with the assistance of confederates who portrayed the attorney (or attorneys) and a judge.

The "trial" phase of the simulation was designed to compare perceptions of adversary and nonadversary procedures. In the nonadversary variation, the subjects were told that an attorney had been assigned to gather and present evidence for both sides of the case in the most impartial way possible. This lawyer was described as the court's investigating attorney, who was responsible to the judge. He was said to be earning a fee of six dollars for his services. During the trial, this attorney sat facing the judge and presented evidence for both the plaintiff and the defendant.

[18] Neither the observer-category subjects in the North Carolina study nor the subjects in the Virginia study had this information, a condition that seems likely to conform to the situation of persons similarly affected by actual litigation.

In the adversary variation, subjects selected an attorney after examining several resumes supplied to them.[19] They were told that their lawyer was responsible for presenting their side of the case to the judge in the most favorable light possible. These subjects also were told that their chosen attorney would receive four dollars for his services and an additional four dollars should he succeed in winning the case. During the trial, the two opposing attorneys sat facing one another, and the plaintiff's attorney presented his evidence first. The evidence presented and the order of presentation (plaintiff then defendant) were the same in all variations.

Reactions to outcome also were compared by varying the verdicts of the trials. Half the subjects received a handwritten card stating that their company had been found innocent of the charges of espionage; thus they won the contract, including the payment and the opportunity to continue. The remaining subjects were informed that they had been found guilty; thus they lost the contract.[20]

The procedure and verdict comparisons are of greatest importance; a third comparison was made to provide some assurance that the results were not a product of the way the information was collected. This comparison focused on the order in which questionnaires concerning the procedure, verdict, and overall trial experience were presented to the subjects. One third of the subjects completed a questionnaire about the procedure, heard the verdict, and then completed a questionnaire ahout the verdict. All the other subjects heard the verdict before completing any questionnaire. Half of this latter group completed the procedure questionnaire first and then the verdict questionnaire; half completed the verdict questionnaire first and then the procedure questionnaire. Finally, all subjects completed an overall questionnaire.

We introduced persons analogous to the public into the experiment by including 123 observer subjects who did not participate in the trial and for whom outcomes were not affected by the result of this phase of the experiment. At each session, between one and three observers received a brief description of the business simulation and were told that they would observe various phases of it. They were informed that their first observation would involve witnessing the trial of a charge by one company that the other company had carried

[19] In fact, subjects received the same attorney regardless of the resume they had chosen.

[20] The subjects were instructed initially that the outcome of the contract competition would coincide with the outcome of the espionage trial if espionage were charged.

out industrial espionage. To make the proceedings relevant for the observers, they were informed that they might later become involved as participants in the business simulation. Thus, they resembled members of the public who might assume that they someday may be involved in civil or criminal litigation. These observer subjects then entered the trial room, witnessed the trial, and returned to answer a questionnaire about their observations. The planned comparisons described earlier also determined the variations experienced by the observer subjects. Half of these subjects viewed the adversary procedure; half viewed the nonadversary procedure. Half of the trials resulted in verdicts of guilty; half resulted in acquittals. One third of the observers answered the procedure questionnaire before hearing the verdict; the remainder answered after hearing the verdict.

B. The Virginia Study

The Virginia study, conducted shortly after the North Carolina study, was intended to examine the perceptions of the intermediate category of persons who do not directly participate in litigation but whose interests are affected by the result. One hundred and thirty-three subjects were asked to take the role of a stockholder in a simulated company. They were told, "You will have an interest in the success of the company and, specifically, there will be an extra monetary payment that will depend on how well the company does in the simulation, just as the dividends of real stockholders depend on how well their companies do in business." The intermediate-category subjects received a description of the advertising competition, which concluded with a description of the spying option and the information that their extra monetary payment would depend on the outcome of any trial.

The subjects viewed videotaped scenes from the trial of the complaint against "their" company and then completed procedure, verdict, and overall questionnaires about the tape. The trial scenes were produced from the same script and used the same format as the North Carolina study. The Virginia subjects therefore viewed as interested observers essentially the same proceedings as were employed in the earlier experiment; thus the comparisons of adversary and nonadversary procedures and of favorable and unfavorable outcomes were the same as in the North Carolina study. A different order comparison was obtained by arranging for half of the subjects to hear the verdict first and then to see the trial procedure, while

the other half saw the procedure first and then heard the judge announce the outcome. In addition, one half of the intermediate-category subjects who heard the verdict first and then saw the trial procedure rated the verdict after it was announced but before seeing the trial procedure, while the other half heard the verdict, then witnessed the procedure, and finally completed a questionnaire rating the outcome of the process.

III. Results

The reactions of the subjects in both studies were collected using the three questionnaires previously mentioned. The procedure questionnaire asked for a detailed assessment of the decisionmaking process and was intended to provide a link between the present research and the earlier studies, which dealt primarily with procedural justice issues. The verdict questionnaire asked for a detailed assessment of the outcome of the trial. The overall questionnaire asked for the subjects' more general reactions to the litigation, including their perceptions of the fairness of the procedure and the verdict and their satisfaction with each. We shall be concerned primarily with the third, overall questionnaire; we mention the results obtained on the other two questionnaires when they serve to clarify or explain the subjects' general reactions to the trial.

We first analyzed the responses to the overall questionnaire, using a statistical technique known as "factor analysis." This enabled us to summarize the subjects' ratings in terms of general "factors" that combine the several rating scales according to the natural relationships that exist between them.[21] We found that we could readily combine the individual rating scales into two factors: one summarizing the overall favorableness of the subjects' reactions to the procedure and the other summarizing the overall favorableness of the subjects' reactions to the verdict. The former factor can be viewed as an index of the extent to which the subject felt that the *procedure*

[21] Numerous techniques exist for the factor analysis of data such as these. We employed a principal components analysis with varimax rotation. We also tried alternative techniques, including "oblique" rotations and "maximum likelihood" procedures, all of which generated factors similar to those presented here. This enhances our confidence that the present results accurately represent the factors underlying the individual scales. For a technical presentation of these procedures, see R. Harris, A Primer of Multivariate Statistics 155-204 (1975). For an illustration of the use of this type of analysis in a technical journal, see Erickson, Lind, Johnson & O'Barr, *Speech Style and Impression Formation in a Court Setting: The Effects of "Powerful" and "Powerless" Speech*, 14 J. Experimental Soc. Psych. 266 (1978).

was fair, satisfying, and trustworthy; the latter as an index of the extent to which the subject was satisfied with the *verdict* and thought it was fair. We then subjected these indices to a second statistical analysis, termed "analysis of variance," which investigated the effects of the variations of procedure, verdict, order of assessment, and role described in the preceding section.[22]

A. Reactions to Adversary and Nonadversary Procedures

The subjects' reactions to the procedure are shown in Table 1, which presents the major findings with regard to this index. It shows the average value of the index for each combination of role, procedure, and verdict. For example, the value in the first column of the first row of the table, 0.28, is the average score for subjects in the participant category who received a guilty verdict from an adversary procedure.

TABLE 1: FAVORABLENESS OF REACTIONS TO PROCEDURE

	Participant			Intermediate			Observer		
Verdict	Adversary		Nonadversary	Adversary		Nonadversary	Adversary		Nonadversary
Guilty	0.28	>	-0.29	0.20	>	-0.40	0.33	>	-0.37
Innocent	0.18	>	-0.24	0.37	>	-0.22	0.34	>	-0.31

Note: The values in this table are the mean factor scores in each condition. Columns separated by a "greater than" sign (>) are significantly different, according to directional test using Student's *t*.

We can state the major finding with regard to the subjects' reactions to the procedure quite simply: reactions to the adversary procedure were universally more favorable than were reactions to the nonadversary procedure ($p < .0001$).[23] This can be seen by comparing the values in the first column of the table to the values in the

[22] Analysis of variance is a standard statistical procedure that allows assessment of the individual and joint effects of a number of experimental variations. It also permits the determination of whether a particular effect is unlikely to have resulted from chance variation in the data. We report here only those effects that have been found very unlikely to be the result of spurious variation (*i.e.*, those that would occur less than five times in a hundred in the absence of a real effect).

[23] The "*p*" values presented in the text are those associated with the statistical tests that support each statement. These values reflect the likelihood that the statement is in error because it is based on random variation rather than on a real difference. By convention only those statements that would be in error less than five times per hundred ($p < .05$) are accepted as real. It is the nature of statistical inference that, while one cannot be absolutely sure that a particular conclusion is accurate, one can assess the probability of error and restrict oneself to those conclusions that are most likely to be accurate.

second column; by comparing the values in the third column to the values in the fourth column; and by comparing the values in the fifth column to the values in the sixth column. Statistical tests[24] applied to each comparison confirmed that subjects in all categories reacted more favorably to the adversary procedure than to the nonadversary procedure, both when the verdict was "guilty" (participants, $p < .025$; intermediates, $p < .01$; observers, $p < .005$) and when it was "innocent" (participants, $p < .05$; intermediates, $p < .01$; observers, $p < .005$). Comparison of the values in the first row to those in the second row of Table 1 indicates that the verdict had no substantial effect on reactions to the procedure. The index summarizing reactions to the procedure thus demonstrates that, regardless of the subject's perspective, the adversary procedure was seen as more fair and satisfying than was the nonadversary procedure.

B. Reactions to Verdict: Relationships Between Role, Procedure, and Outcome

Analysis of the favorableness of reactions to the verdict revealed that these reactions depended jointly on the subjects' role and the procedure ($p < .05$) and on the nature of the verdict ($p < .0001$). Table 2 presents the major findings with regard to this index. Again, each value in the table is the average of the index for all subjects in a particular combination of procedure, verdict, and role variations.

TABLE 2: FAVORABLENESS OF REACTIONS TO VERDICT

	Participant			Intermediate		Observer	
Verdict	Adversary	>	Nonadversary	Adversary	Nonadversary	Adversary	Nonadversary
Guilty	-1.96	>	-2.46	-0.57	-0.47	-0.26	-0.27
Innocent	2.36	>	1.80	0.55	0.42	0.15	0.38

Note: The values in this table are the mean factor scores in each condition. Columns separated by a "greater than" sign (>) are significantly different, according to directional test using Student's *t*.

The several findings of the statistical analysis can be seen in the table. It will be noted that subjects in all three roles responded more

[24] These tests used a statistical test termed "Student's one-tailed *t*-test." In this instance it tests whether the observed increase in favorableness of reactions to the verdict is likely to have resulted from chance. The "*p*" values presented in the text provide assurance that the increase is real.

favorably to an innocent verdict than to a guilty verdict ($p < .0001$). For each column of the table, the value in the second row, representing reactions to an innocent verdict, is higher than the value in the first row, representing reactions to a guilty verdict. As one would expect, the subjects in the participant and intermediate roles, whose monetary outcomes depended on the verdict, showed this effect more strongly than did the subjects in the observer role ($p < .0001$). Nevertheless, even the observers showed a significantly more favorable reaction to the innocent verdict than to the guilty verdict ($p < .01$).

Most important, however, is another finding seen in Table 2. Note that the participant subjects showed more favorable reactions to the verdict when the trial had used an adversary procedure than when the trial had used a nonadversary procedure. That is, for both the "guilty" and "innocent" rows in Table 2 the value in the first column is substantially higher than the value in the second column. Additional statistical tests[25] confirmed that for the participant subjects the use of the adversary procedure resulted in more favorable reactions to the verdict, whether the verdict was guilty ($p < .05$) or innocent ($p < .025$). In contrast, no such effect of the procedure on reactions to the verdict was found in the responses of subjects in the intermediate or observer categories.[26] These results demonstrate, then, that the use of an adversary procedure increases the acceptability and perceived fairness of the verdict only for individuals who participate personally in the trial.

C. *Additional Findings*

Two findings that emerged from analysis of the order and timing experimental variations are worthy of brief mention because they strengthen the conclusions noted above. First, we found that the advantages of the adversary procedure revealed on the overall questionnaire were not restricted to any particular order of administration of the questionnaire or, in the case of the intermediate-category subjects, to either of the two orders of exposure to the verdict and

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[25] These tests used a Student's one-tailed *t*-test. *See* note 24 *supra*.

[26] The analysis-of-variance test of the difference between the three roles in their responses to the two procedures was statistically significant ($p < .05$). The test used to measure this difference is termed the "procedure by role interaction." The small differences between the third and fourth and between the fifth and sixth columns are not large enough to be statistically significant.

procedure.[27] This finding increases our confidence that the results presented above are "robust," that they are not the result of a particular way of assessing the subjects' reactions. We also found, when we conducted analyses of the process questionnaires,[28] that the factors that were sensitive to the order variations were generally those relating to the subjects' reactions to the attributes and actions of the individuals that they saw in the trial, rather than to the procedure per se. For example, while subjects in the participant category showed a tendency to reevaluate the quality of the presentation of their case depending on whether the verdict obtained was favorable or unfavorable, they showed no tendency to change their opinions concerning whether the lawyer presenting their case favored their arguments. It appears that a negative verdict may decrease a participant's evaluation of his or her lawyer's skill but not the extent to which the lawyer is seen as an ally. Indeed, the results indicated a lesser inclination to reevaluate the quality of the lawyer's presentation when the procedure was adversary than when the procedure was nonadversary.[29]

IV. Discussion

What then is the relation between procedural and distributive justice? We presented above three competing possibilities for this relation: that perceptions of procedural justice influence perceptions of distributive justice; that perceptions of distributive justice influence perceptions of procedural justice; and that perceptions of procedural and distributive justice are unrelated. The results of the present studies confirm the first and third of these possibilities under certain circumstances: perceptions of procedural justice enhance perceptions of distributive justice only on the part of participants in the decisionmaking process; absent the personal participation that characterizes that role there is no relation between perceptions of the two types of justice. That perceived distributive justice

[27] It should be noted that statistical inference does not permit us to be as certain in this statement about the nonexistence of a difference as we can be in statements about the existence of a difference.

[28] We analyzed the results from the process questionnaire separately for each role because these questionnaires, unlike the overall questionnaires, differed somewhat, depending on which role the subject held.

[29] When there were differences between the pre-verdict and post-verdict responses of the subjects on factors closely related to the central qualities of the procedures, the differences were about the same for both the adversary and nonadversary procedures and do not affect

does not affect perceived procedural justice is evident in the absence of any effect of the trial outcome on the reactions of any role category to the trial procedure. Even though unfavorable verdicts produced very negative reactions to the verdict, they did not affect reactions to the procedure.

We can state succinctly the implications of these studies for the understanding of psychological reactions to legal procedures and institutions. The most general finding is that persons having each of the three key perspectives on litigation all responded more favorably to the adversary procedure. With respect to participants and observers, this finding confirms the results of earlier studies, which indicated a general preference for adversary proceedings.[30] The finding that persons in the intermediate category also perceived an adversary decisionmaking process as fairer than a nonadversary process significantly extends these previous findings. Thus, we state with increased confidence that a litigation model that assigns a high degree of control over the process to the disputing parties, and control over the final decision to a third party, will be preferred and perceived as more fair.[31] Moreover, the perception of the fairness of an adversary procedure carries over to create a more favorable reaction to the verdict for persons who directly participate in the decisionmaking process. Thus, we can say that an adversary decisionmaking model enhances the perception of both procedural and distributive justice. We must note, however, that while the intermediate- and observer-category subjects responded more favorably to the adversary *procedure,* that model did not enhance the acceptability of the *outcome.* Procedural and distributive justice thus are related by the element of actual participation in the decisionmaking experience. That is, at least with respect to perceptions, "ends" (distributive justice) cannot justify "means" (procedural justice), but "means" can indeed justify "ends" to the extent that, for participants, the perception of procedural justice partially determines the perception of distributive justice.

What is it about participation that facilitates the carryover of perceived fairness of the procedure to perception of a just outcome?

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the relative reactions to the two procedures. For example, while there was a tendency for the participant subjects who received a guilty verdict to decrease their estimates of the extent to which the procedure favored their case (relative to the estimates given by participants who had not heard the verdict yet), this tendency was the same regardless of the procedure.

[30] *See* sources cited note 1 *supra.*

[31] *See* J. THIBAUT & L. WALKER, *supra* note 1, at 117-24.

We conclude that essential causal mechanisms involve the participant's perception that he exercises some measure of control in the adversary process, not only on the conduct of the proceeding but also on its outcome. Enhanced acceptability of outcome may result directly from the exercise of control, possibly because people may tend to favor persons or situations that they control.[32] Alternatively, the exercise of control may work indirectly to reduce dissatisfaction with an unfavorable outcome by securing a heightened degree of commitment to the consequences of the procedure.[33] Ultimate selection among these possibilities must await further investigation.

We can draw some important conclusions from consideration of the experiences of each category of subjects. For participants, the evidence that an adversary procedure significantly enhances the acceptability of the outcome suggests that civil and criminal processes should be designed to facilitate personal participation by the parties. This participation, the data suggest, will result both in the perception that a comparatively fair procedure was employed and in enhancement of the perception that distributive justice was obtained, regardless of the outcome.

The data suggest that the attorney should facilitate participation by the client in the decisionmaking process. The case ought to be regarded as belonging to the client, not to the lawyer, and the attorney should see himself as the agency through which the client exercises salutary control over the process. In this client-centered role, the attorney best functions as an officer of the court in the sense of serving the wider public interest.

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[32] *See* H. KELLEY & J. THIBAUT, INTERPERSONAL RELATIONS: A THEORY OF INTERDEPENDENCE 234-35 (1978). This interpretation may be flawed, however. Because the interpretation is based on research findings that persons favor social environments in which they perceive that their control has produced benefits to themselves, it does not explain clearly how perceived control can moderate dissatisfaction with unfavorable outcomes.

[33] *See* C. KIESLER, THE PSYCHOLOGY OF COMMITMENT (1971). If commitment produces a felt obligation to accept the consequences of a procedure, it may well explain the reduced dissatisfaction with an unfavorable outcome. The notion of commitment, however, has a different difficulty—that of explaining the enhanced satisfaction with a favorable outcome, *see id.* at 63, a difficulty the related formulation from dissonance theory would share, *see id.* at 46-65. Although there is a way in which a special application of commitment theory possibly can account for both the enhanced satisfaction with a favorable outcome and the reduced dissatisfaction with an unfavorable outcome under an adversary procedure to which the person is committed, *see id.* at 90-108, it is possible that the most viable interpretation will be more frankly deontological; the acceptability of both favorable and unfavorable outcomes is augmented to the degree that the antecedent procedure is perceived to be grounded in a widely applicable ethic. *See* Houlden, LaTour, Walker & Thibaut, *supra* note 1, at 27.

The results for the intermediate group of subjects are troubling. Like participants, these subjects believe that an adversary presentation is fairer than a nonadversary presentation and yet, unlike participants, this sense of fairness does not carry over to enhance the acceptability of the outcome. Nevertheless, the intermediate-category subjects, like the participants, are significantly concerned about outcome, and hence the failure to carry over is important. In other words, for intermediate-category subjects vicarious participation in decisionmaking is not sufficient to enhance the acceptability of the outcome.

The significance of this finding is underscored by the fact that the intermediate-category subjects in these simulations actually witnessed the decisionmaking process, though they were barred from direct participation. In many instances of actual litigation, persons analogous to those in our intermediate category may not have the opportunity to observe the decisionmaking process. For these people, even the socially ameliorative effect produced by the perception of a fair procedure is lost.

These observations bear on the current question whether all class members should receive notice and an opportunity to participate, regardless of the particular type of class action suit used. Of the three types of class action suit available under rule 23 of the Federal Rules of Civil Procedure, only one provides for mandatory notice.[34] Current controversy centers on whether due process requires notice in the two other procedures despite the silence of the rule. Some courts have held that the presumed quality of representation in actions under rule 23(b)(1) and (2) justifies omission of notice and an invitation to participate to class members;[35] others have held that fundamental fairness requires notice to all class members that can be identified with reasonable effort.[36] Our studies suggest that

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[34] *See* FED. R. CIV. P. 23(c)(2) (mandatory notice for rule 23(b)(3) class actions).

[35] *See, e.g.*, Citizens Environmental Council v. Volpe, 364 F. Supp. 286, 288 (D. Kan.), *aff'd*, 484 F.2d 870 (10th Cir. 1973); Lynch v. Household Fin. Corp., 360 F. Supp. 720, 722 n.3 (D. Conn. 1973); Vaughns v. Board of Educ., 355 F. Supp. 1034, 1035 n.1 (D. Md. 1972); Hooks v. Wainwright, 352 F. Supp. 163, 166 (M.D. Fla. 1972); Woodward v. Rogers, 344 F. Supp. 974, 980 n.10 (D.D.C. 1972), *aff'd mem.*, 486 F.2d 1317 (D.C. Cir. 1973); Northern Natural Gas Co. v. Grounds, 292 F. Supp. 619, 636 (D. Kan. 1968), *aff'd in part on other grounds*, 441 F.2d 704 (10th Cir. 1971), *cert. denied*, 404 U.S. 1063 (1972).

[36] *See, e.g.*, Schrader v. Selective Serv. Sys. Local Bd. No. 76, 470 F.2d 73, 75 (7th Cir.), *cert. denied*, 409 U.S. 1088 (1972); Zeilstra v. Tarr, 466 F.2d 111, 113 (6th Cir. 1972); Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 564 (2d Cir. 1968) (*Eisen II*); United States *ex rel.* Walker v. Mancusi, 338 F. Supp. 311, 316 n.4 (W.D.N.Y. 1971), *aff'd on other grounds*, 467

the perception of distributive justice can be enhanced only by personal participation in the adversary process and that as a matter of policy all class members therefore should receive notice because it usually is a prerequisite to participation. This analysis applies with equal force to other proposals to extend the binding effect of judgments to persons not having an opportunity to directly participate in the decisionmaking process.[37] The results argue against extension of procedural principles or mechanisms that rely on vicarious participation because among vicarious participants even the perception that a fair procedure was used will not enhance the perception that distributive justice was done.

Observer-category subjects are more favorable toward an adversary procedure (and an innocent verdict), but, as was the case with the intermediate-category subjects, this preference for an adversary procedure does not affect their reaction to verdicts. Observers, however, have no significant outcome interest, and thus their failure to carry their favorable assessments of procedure over into their assessments of verdicts is of much less importance. The procedural results do suggest that attention to procedure and to the enhancement of party participation through the use of an adversary model is an effective way to improve the public perception of the justice system. Persons in the role of observers, analogous to members of the general public, are sensitive to differences in procedure and consider more fair and more desirable procedures that have the basic characteristics of the adversary model. Note, however, that the observer subjects did indeed witness the process under consideration. Without this experience their favorable opinion of the process would not have been possible. This suggests that widespread public viewing of courtroom activities is desirable and that proposals for telecasting criminal and civil trials merit support.[38] Similarly, the results argue against any reduction in public access to civil and criminal trials.[39]

F.2d 51 (2d Cir. 1972); Lopez v. Wyman, 329 F. Supp. 483, 486 (W.D.N.Y. 1971), *aff'd mem.*, 404 U.S. 1055 (1972); Pasquier v. Tarr, 318 F. Supp. 1350, 1353 (E.D. La. 1970), *aff'd on other grounds*, 444 F.2d 116 (5th Cir. 1971); Fowles v. American Export Lines, Inc., 300 F. Supp. 1293, 1295 n.1 (S.D.N.Y. 1969), *aff'd on other grounds*, 449 F.2d 1269 (2d Cir. 1971); Clark v. American Marine Corp., 297 F. Supp. 1305, 1306 (E.D. La. 1969).

[37] *See* notes 12-14 *supra* and accompanying text.

[38] *See* Weinstein & Zimmerman, *Let the People Observe Their Courts*, 61 JUDICATURE 156 (1977); Wilson, *Justice in Living Color: The Case for Courtroom Television*, 60 A.B.A. J. 294 (1974); Comment, *T.V. or Not T.V.: Televised and Photographic Coverage of Trials*, 29 MERCER L. REV. 1119 (1978).

[39] *But cf.* Gannett Co. v. DePasquale, 99 S. Ct. 2898 (1979) (denying access of the media to pretrial proceedings in a criminal case).

The reactions of observer-category subjects suggest that public dissatisfaction with the courts indeed can be reduced, as Pound believed, by alterations in court procedures;[40] contrary to Pound's belief, however, adoption of nonadversary procedures would diminish rather than enhance public esteem for the legal process.[41]

[40] *See* Pound, *supra* note 15, at 404-06, 408-14, 35 F.R.D. at 281, 284-89.
[41] *See id.* at 404-06, 35 F.R.D. at 281.