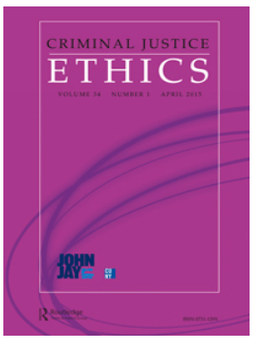

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ARTICLE

Why Should Justice Be Seen to Be Done?

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A well-known maxim instructs that justice should be seen to be done. When "seen" is understood in the sense of "observed", the maxim is easily defended: open court proceedings protect against arbitrary and partial decisions. However, when "seen" is understood in the sense of "seem," the maxim is more puzzling, since it is not obvious why courts should concern themselves with people's perceptions that justice has been done. This article addresses this issue, with a particular focus on the social and other benefits that result when judges observe procedures that are widely regarded as fair, especially in criminal trials. The article draws on empirical studies in social psychology that show that when legal authorities treat people in ways that accord with "lay" procedural expectations, they are more likely to view the authorities as legitimate, to cooperate with them, and to obey the law out of an internalized sense of obligation. The article explores the moral significance of these empirical findings, arguing that it would be superficial to see them as a recipe for social stability. The deeper truth conveyed by the empirical research is that relating to people in ways that are widely perceived to be fair is a way for authorities to engage people's moral sentiments and to enliven their virtuous capacity to put aside considerations of self-interest so as to do what is right. This dynamic provides a sound moral foundation for courts to concern themselves with perceptions of justice.

Keywords: Lord Hewart, open court principle, procedural justice, appearances, psychology

1. Introduction

It is of "fundamental importance," said Lord Hewart in *Rex v. Sussex Justices; Ex parte McCarthy*, "that justice should not only be done, but should manifestly and undoubtedly be seen to be done."[1] Although this maxim is frequently cited, and its truth generally accepted as self-evident, some of the ideas that it reflects are philosophically more complex and require more sustained defense than might at first appear. In this article, I investigate the

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philosophical issues raised by Lord Hewart's famous observation, with a particular focus on its relevance to criminal proceedings.

In section 2, I begin by distinguishing two interpretations of the maxim. On the first interpretation, it is concerned with the publicity of court proceedings. On the second interpretation, it is concerned with the perception that justice has been done. The first understanding of the maxim is relatively easy to defend, and only a few comments on it are necessary. By contrast, the idea that "impressions" or perceptions of justice are important is more puzzling, and the remainder of the article is devoted to it. My aim is to show that empirical studies conducted by social psychologists help us to understand why courts should be concerned with perceptions of justice and, in particular, why they should observe procedural rules that people regard as just or fair, especially in criminal trials, even if this is not required to do actual justice in individual cases.

This reliance on empirical studies may seem wrong-headed to many philosophers. Legal and political philosophers traditionally approach questions of justice from a purely theoretical or conceptual perspective, and are likely to regard people's beliefs about procedural justice as irrelevant. After all, philosophers are in search of objective standards for assessing whether procedures are just. They are interested in the correct conception of procedural justice. Why, then, it might be asked, should they take any interest in the popular conception of justice—a conception that may be inadequate? Conversely, psychologists working in the field of justice studies generally see themselves as undertaking the scientific investigation of people's beliefs and attitudes, an enterprise which, according to them, is devoid of implications for normative analysis, something that they expressly eschew.[2] This article rejects these methodological assumptions. It seeks to show that the scientific understanding of the public's conception of procedural justice is relevant to philosophical theorizing about the moral quality of procedures. It thereby makes a contribution to what Jesse Prinz calls "empirical philosophy," understood as empirically informed philosophy or philosophical analysis that draws on empirical data to address philosophical questions.[3]

In section 3, I describe empirical findings regarding the criteria people use in assessing the justice of procedures. The research reveals that people's procedural justice assessments are powerfully influenced by the quality of the interpersonal treatment they receive at the hands of legal authorities. The research also reveals that people care deeply about procedural matters, primarily because the experience of being fairly treated by legal authorities sends a symbolic message of status within one's social group, which is in turn a source of self-respect.

In section 4, I explain the social benefits that ensue when judges make decisions via procedures that people regard as fair. Again I draw on empirical research, discussing studies that show that perceptions of fair process encourage people to believe that the law and legal authorities are legitimate, which in turn makes it more likely that they will voluntarily cooperate with legal authorities, accept their decisions, and comply with legal rules and standards even when this conduct clashes with self-interest. Satisfying people's procedural expectations is consequently an effective way of

promoting conflict resolution and securing obedience to the law.

Of course, willing cooperation and compliance with legal rules and decisions are not necessarily desirable. In unjust systems—for instance, systems in which a minority group is exploited and persecuted—support for the system and obedience to authority will be vices, not virtues. False consciousness is also a danger in unjust societies. As some authors have pointed out, providing the superficial satisfactions of procedural regularity may be a way of pacifying the members of oppressed groups and masking substantive injustices.[4] These are important phenomena that would obviously need attention in considering the moral obligations of authorities and citizens in unjust societies. However, this article is concerned only with the value of satisfying people's procedural expectations in societies in which the legal rules are just.

The assumption underlying my approach is that we first need a secure grasp on people's moral obligations in ideal conditions before we can satisfactorily reflect on what they should do in non-ideal conditions. John Rawls first introduced the distinction between ideal theory and non-ideal theory in *A Theory of Justice*. Since then it has undergone considerable refinement and has gradually come to be used as an umbrella term for a number of sub-distinctions. The version of the distinction on which I rely in this article is that between working out a conception of perfect justice (within the constraints of what is practically possible) and using this conception to critique and reform existing imperfect arrangements so as eventually to achieve the ideal. Rawls argues that the first endeavor is a prerequisite for the second, saying that "until the ideal is identified … nonideal theory lacks an objective—a goal—by reference to which its questions can be answered."[5]

I think that Rawls' claim about the priority of ideal theory is correct, although I can neither defend it here, nor argue for a particular theory of justice, apart from saying that in referring to Rawls I do not mean to endorse his own ideal theory, justice as fairness. Without entering into these debates, I simply make the idealizing assumption in this article that the laws are just (by reference to whatever theory of justice is correct) and hence that they deserve respect, in which case the social benefits of satisfying people's procedural expectations help to explain why courts should in just systems seek to prevent the appearance of injustice, even if this sometimes requires the overturning of decisions in the absence of any error in the result.

Finally, in section 5, I argue that the role played by the experience of fair treatment in encouraging the motivations mentioned above, and especially the willingness to put aside considerations of personal advantage so as to comply with just legal rules and decisions, has a moral significance that transcends a purely strategic perspective. This is the case because the motivations in question are social virtues so that creating the experience of fair treatment is consequently a way of encouraging people to lead a life of virtue. I spell out the implications of this reasoning in section 5, drawing the conclusion in section 6 that when we assess the moral quality of procedures, their aptness to reassure people that justice has been done deserves a central role.

2. Disambiguating Lord Hewart's Maxim

Lord Hewart's maxim can be interpreted in two different ways, corresponding to two different meanings of the word "seen" in the phrase "seen to be done." In one sense, it means "observed to be done," in which case its opposite is "secret." Understood in this way, the maxim calls attention to the need for the courts to be open to the public and the press, so that what occurs in them can be witnessed, reported, and discussed. The maxim understood in this way also supports the principle that courts should publish the reasons for their decisions.[6]

The ideas that judicial proceedings should be exposed to public scrutiny and that judges should publish the reasons for their decisions are relatively straightforward to understand and defend, at least as a matter of general principle. Cesare Becarria described secrecy as "tyranny's strongest shield," and Jeremy Bentham observed similarly that "[i]n the darkness of secrecy, sinister interest and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks, applicable to judicial injustice, operate."[7] Bentham also wrote: "[Publicity] is the keenest spur to exertion and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial."[8] These points go a long way towards explaining why judges should discharge their duties in public: publicity provides an important safeguard against arbitrary and partial judicial decisions.

It is no surprise, then, that the open court principle is widely recognized as a legal norm. It has been described as "one of the most pervasive axioms of the administration of justice in common law systems."[9] The right to public proceedings is also reflected in various international and regional human rights instruments, such as the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, and guaranteed to varying degrees by a number of national constitutions—for instance, via the combination of the Sixth and First Amendments to the Constitution of the United States.[10]

Notwithstanding the importance of publicity in preventing injustice, there are exceptional cases in which justice itself demands some sacrifice of the principle, as Bentham himself was aware. For one thing, the public's right of access to trial proceedings can come into conflict with the rights of others. For instance, it may be necessary to hear cases involving trade secrets and confidential communications in camera. Secondly, the right of access can conflict with the public interest—for instance, where open proceedings would threaten national security. The open court principle is therefore best read as prescribing that open justice should be the norm and that any exceptions should be strictly circumscribed—an approach that is reflected in the law of many countries.[11]

I turn now to the second understanding of the idea that justice must be seen to be done, one that raises more complex issues. On this

understanding, the word "seen" is understood to mean "seem." When interpreted in this way, the maxim instructs decision-makers to be concerned not only with whether justice has been done, but also with whether it "appears" to have been done. This concern normally makes itself felt in the procedural context, but, before I discuss procedural impropriety, it is worth mentioning that the open court principle is sometimes justified not only by the role it plays in preventing actual injustice, but also by the contribution it makes to the appearance of justice. For instance, in *Richmond Newspapers v. Virginia*, in which it was held that the agreement of the parties to conduct proceedings in secret does not provide sufficient reason to close a court, both justifications for the open court principle were invoked. It was said that secrecy not only encourages abuse of power, but also encourages the suspicion that justice has not been done. Chief Justice Burger remarked: "[t]o work effectively, it is important that society's criminal process 'satisfy the appearance of justice' and the appearance of justice can best be provided by allowing people to observe it." He added: "it is difficult for [people] to accept what they are prohibited from observing."[12]

It is, however, in regard to procedural matters that the appearance of justice is taken most seriously by courts. An instructive example is the English case of *R v. Pat Arrowsmith*. The defendant, a pacifist campaigner, had been convicted for distributing a pamphlet to British soldiers that incited mutiny and desertion and sentenced to 18 months' imprisonment. She appealed against her conviction and sentence, on the ground that the Director of Public Prosecutions had not taken action in respect of previous distributions of the pamphlet and had failed to warn her that she could not expect him to remain inactive. The court upheld the conviction, finding that her behavior was unlawful and that her mistaken belief that she would not be prosecuted for the offense was not a defense to the charge. It nevertheless quashed the sentence and substituted a sentence allowing for her immediate release, saying it was acting "in the interests, not of justice but the appearance of justice."[13]

How exactly should we interpret the court's reference to acting in the interests of the "appearance of justice"? Someone might say that "appearance" could not have been meant in the literal sense in which appearances can diverge from reality, because no one, including Lord Hewart, could believe that courts should be in the business of providing sham justice in place of real justice. Hence, when the court said justice must "appear" to be done, it must simply have meant that justice must "evidently" or "recognizably" be done. Since it was obviously unjust to imprison the defendant in light of the director's inaction, this must have been why the court quashed her sentence.

This is not, however, how the court reasoned. In fact, the court stated that "justice would have been done to this woman by a long sentence." In other words, justice would have been done not by releasing the defendant but by imprisoning her. From the moral perspective of what is "obviously just," this may seem strange, but legally it was correct. When courts talk about "doing justice" they are using the phrase to describe outcomes that accord with legal rules and standards. So when the court said that in releasing the defendant it was not doing

justice, it meant that legally speaking she deserved to be imprisoned, since she had committed the offense charged and did not have a defense. Why, then, did the court quash the sentence? It did so because the director's failure to warn the defendant had given her, to use the court's words, "some grounds for thinking" that it was unfair to imprison her.[14] In other words, the court thought it was more important to avoid the justified albeit inaccurate perception that it would be unjust to imprison the defendant than to deliver a just (in the sense of legally correct) outcome.

The way in which the court weighed these competing values is not obviously correct and requires justification—a matter to which I will return shortly. However, the key point for present purposes is that the court was genuinely concerned with "appearances," although not in the sense of constructing a fiction, since it did not see itself as pulling the wool over people's eyes by delivering a simulacrum of justice. Instead, it was concerned about perceptions of an unjust outcome that, although not "veridical," had a basis in procedural impropriety and therefore had to be remedied, even at the (openly admitted) cost of not doing justice. Indeed, it was with such non-veridical perceptions of injustice supported by evidence of procedural impropriety that Lord Hewart himself was concerned in the case in which he made his famous statement. If there are difficulties with taking such perceptions seriously, they are not the difficulties that would attach to courts trying to palm off unjust outcomes as just ones.

That this is how courts understand the notion of "appearances" is confirmed by the approach common law courts take to breach of the principles of natural justice or procedural fairness—the hearing rule (one's right to know the case against one and to respond) and the rule against bias. Generally speaking, breach of these principles will lead to an overturning of the decision. Undoubtedly, one reason to insist on observance of these procedural rules is that a hearing before an impartial tribunal improves the quality of judicial decision-making and is therefore the most reliable way of arriving at just outcomes. However, common law courts take the view that this is not the only reason to invalidate decisions that do not observe the rules of natural justice. They will set aside procedurally irregular decisions even if they do not believe that the irregularity led to a miscarriage of justice, on the ground that the irregularity might have led fair-minded or reasonable lay observers to suspect such a miscarriage.

Consider, for instance, the rule against bias. This rule requires courts to strike down a decision if there was an appearance of bias as judged from the perspective of the parties or the public. If the parties or the public might entertain a "reasonable apprehension" that the decision-maker was biased, or might consider that there was a "real possibility" of bias—due, for instance, to a judge's significant pecuniary interest in the outcome of a trial, or judicial conduct indicating prejudgment of the matter—the courts will nullify the decision.[15] This may even involve overturning a guilty verdict in circumstances in which the strength of the evidence against the accused is such that a retrial would be highly unlikely to change the result. Since the justice of the ultimate outcome is not the issue, it is neither

necessary to prove that the judge was biased in reality, nor does the court consider how likely it is that a different judge would have arrived at a different verdict. As long as there is some evidence supporting the suspicion of bias, the affected person will be entitled to a retrial.

Now that I have explained the second interpretation of Lord Hewart's maxim, it is worth elaborating on the distinction between the two interpretations. The *Arrowsmith* case clearly demonstrates the difference. The court quashed the defendant's sentence not because the proceedings from which she was appealing had been conducted in secret, but because she would have had reason to think that punishing her was unjust in light of the Director of Public Prosecution's behavior. Conversely, legally correct decisions can be tainted by breach of the publicity principle without any accompanying perceived unfairness. Such was the case in *McPherson v. McPherson*, which dealt with an undefended divorce suit tried in the judges' law library behind a door marked "Private." There was no suggestion that the judge had deliberately breached the right of the public to be present, that the trial was in any other way defective, or that the outcome was unjust. The Privy Council nevertheless held that the exclusion of the public was irregular and that the decree of divorce was voidable (although the time for avoiding it had passed), referring to the public's interest in the institution of divorce, as well as the need for solemnity in divorce proceedings.[16]

I turn now to assess the second version of Lord Hewart's maxim, with a particular focus on its use to overturn decisions on the basis that they were arrived at by procedurally irregular means, even if the court does not believe that there was an error in the result. On the face of it, this is a puzzling practice, especially for anyone who takes the instrumental, results-oriented view that the only point of procedures is to promote accurate decisions.[17] For such a person (an "instrumentalist"), it will be very difficult to understand why there is anything wrong with failing to observe a procedural rule if the failure did not produce an unjust outcome. If, for instance, it was possible in certain circumstances to reach an accurate guilty verdict without hearing from the accused, an instrumentalist will be unconcerned about the fact that the process might have given the public grounds to suspect that justice was not done. After all, since the irregularity did not matter, as judged from the perspective of the ultimate outcome, such a belief would ex hypothesi be mistaken. Likewise, although defendants convicted without having had a proper hearing will no doubt feel a sense of injustice, an instrumentalist will regard their feelings as unimportant if the evidence demonstrates without doubt that they were guilty of the charge. If one thinks that accurate results are all that matter, addressing perceptions of injustice in the absence of error in the result will seem to make a fetish of appearances.

There is also another apparently puzzling feature of the practice of setting aside legally correct decisions on account of procedural impropriety. It is a truism to say that a concern with the views of the public is precluded by the counter-majoritarian role of the courts, whose task it is to apply the law without fear or favor, regardless of public dissatisfaction with their decisions. How, it might be asked, is this conception of the

courts' role compatible with overturning just decisions on the ground that they might give rise to the appearance of injustice? Does this not involve "pandering" to the public's confusions, something that the courts are supposed not to do?

The remainder of this article responds to these puzzles and challenges, explaining why the courts are justified in taking seriously the public's satisfaction with processes, to the extent of overturning correct decisions. It will be shown that this does not involve fetishizing appearances or pandering to the public, but is, on the contrary, a practice of considerable moral importance. I will begin with some hard evidence about the public's views about procedural justice.

3. The Psychology of Procedural Justice

A large literature in social psychology investigates subjective reactions to procedures in a range of settings, including criminal trials. Mostly this inquiry takes the form of surveys of people who have had encounters with authorities, such as the police and the courts, as well as laboratory experiments that create experiences that elicit judgments about procedures. I have analyzed this literature in detail elsewhere,[18] and will merely summarize its key findings here. For present purposes, two findings are of particular relevance. First, the findings consistently support the "procedural justice hypothesis" that processes matter. In fact, people care as much about the processes by which decisions are made as about the justice of the decisions themselves (which psychologists somewhat idiosyncratically call their "distributive justice") and their personal favorability (whether people win or lose).

This unexpected finding, which contradicts the assumption that people care only about whether they win or lose, was initially established by John Thibaut and Laurens Walker in the context of procedures used to resolve disputes in structured courtroom settings. Their studies, which mainly took the form of laboratory simulations, showed that people judge the adversary system of justice to be fairer than the inquisitorial system because of the degree of control it gives the parties in presenting the evidence and arguments. Furthermore, people rate the outcomes arrived at through adversarial processes as fairer than those arrived at through inquisitorial processes, regardless of whether they win or lose at trial. These data showed that the perceived fairness of decision-making processes makes an independent contribution to satisfaction with the outcomes of these processes.[19] Subsequent studies showed that people place the same importance on procedures in real life as in experiments. In addition, people care about procedures in a variety of settings, including more informal legal settings, such as court-annexed arbitration programs, and non-legal settings, such as workplaces.[20] The findings have also been replicated in respect of procedures used to make allocations.[21] In short, as Neil Vidmar remarks, "concern with procedural justice is a robust and pervasive phenomenon."[22]

Secondly, empirical evidence shows that the everyday understanding of the meaning of procedural justice differs

from more technical, legal conceptions of "due process," in being informed by a broader and to some extent unexpected range of concerns. Lawyers tend to think of the fairness of procedures primarily in instrumental terms, namely, whether they are a reliable means for reaching sound legal outcomes. By contrast, so-called "lay principles"[23] of procedural justice also incorporate non-instrumental concerns or concerns that revolve around the intrinsic quality of processes. In particular, people's procedural justice assessments are strongly influenced by the quality of the interpersonal treatment they experience when decision-makers exercise authority. Psychologists call this the "interactional" aspects of a decision-making process.[24]

These interpersonal concerns emerged initially in studies investigating why people value the opportunity for "voice" in decision-making processes. These studies found that people do not necessarily judge participation in decision-making processes from a "rational actor" perspective, since even when the opportunity to present one's own side is not expected to influence the decision-maker, people want to participate for symbolic or so-called "value-expressive" reasons.[25] The importance of interpersonal concerns was confirmed in subsequent studies, which established that when judges are impolite, or send out cues that indicate that they do not have trustworthy motives or are not concerned about people's welfare, people feel that they have been treated unfairly, even if they do not believe that their poor treatment decreased their chances of a successful or fair outcome.[26]

It has been hypothesized that people focus on the intrinsic quality of their interpersonal treatment during their interactions with authorities, rather than the instrumental contribution procedures make to sound outcomes, because satisfactory treatment at the hands of group authorities is connected with feelings of inclusion in the group, something that is of great emotional importance to human beings. The underlying dynamic is affective, rather than cognitive, "hot," rather than "cold."[27] This is the so-called Group Value theory of procedural justice judgments. When judges, for instance, pay attention to people's views, apply legal rules consistently, treat people with dignity and respect, and appear to be neutral or unbiased, this is perceived by the people in question as an evaluation of themselves—a symbolic acknowledgement that they are valued members of the group.[28]

Furthermore, a number of studies have shown that treatment that sends a positive message about one's standing in society supports people's sense of self-respect.[29] This connection is explained by the fact that people's attitudes towards themselves are influenced in part by the regard in which others hold them. Conversely, treating parties to court proceedings in demeaning ways that communicate a message of social inferiority damages self-respect, and the parties experience the treatment as procedurally unjust, even if there is no suggestion that the decision-making process was in any way unreliable or increased the chances of an unjust outcome. As Tom Tyler and E. Allan Lind explain: "[o]utcome-oriented theories of [procedural] justice judgments fail to recognize that people are generally quite ready to accept that they must often accept outcomes that are less than all they had hoped for; what people really

worry about is rejection or the implication of rejection by society."[30]

As noted in section 2, common law courts assume that the failure to provide a proper hearing or the suspicion that a decision-maker was biased will lead people to feel unjustly treated, and it will now be clear that this assumption is empirically supported. However, the fact that the courts' assumption is correct does not yet answer the question posed at the end of section 2, since it does not explain why courts should take these feelings seriously. Why should the courts avoid creating the impression of injustice if they can achieve a just outcome without being perceived to do justice?

I have argued elsewhere that defendants have a moral right to procedures that conform to the "lay" conception of procedural justice. I do not suggest that what people think is just defines what is just. Instead, I refer to the empirical evidence showing that there is a connection between self-respect and the use of procedures believed to be just, and I argue that it is an independent requirement of justice—one that has nothing to do with popular views—to establish legal institutions and arrangements that support self-respect.[31] In this article I will examine the issue from a different angle. I will provide some non-rights-based arguments for taking seriously the psychology of procedural justice, focusing in particular on the social and other benefits of supporting people's self-respect by designing procedures around their interactional or interpersonal concerns. As I will explain in the next section, empirical research has shown that treating people in ways they find interpersonally satisfactory encourages them to obey the law willingly and to cooperate with legal authorities, even when this is not personally advantageous. I will argue that these consequences of the experience of fair treatment are of deep moral significance.

4. Why Perceptions Matter

A good starting point for understanding the social benefits of satisfying people's procedural expectations is the distinction that H. L. A. Hart draws in *The Concept of Law* between external and internal motivations for obeying the law. Hart points out that some people view the law from an external perspective and obey it only because they fear punishment. Their motivations are of an instrumental, cost-benefit kind. Others, by contrast, have internalized the rules. They regard themselves as under an obligation to obey the law and believe that it is wrong to break the rules.[32] Hart uses this distinction to cast light on the nature of law and, in particular, on the difference between law and coercion. He argues that it is an essential characteristic of a legal system that legal officials view law from the internal perspective, as supplying standards with which it is right or obligatory to comply.

Hart does not think the same has to be true of citizens. He thinks that a system in which citizens are motivated only by fear of punishment would still be a legal system.[33] However, even if in principle one could have a legal system in which the

majority of citizens obey the law only for extrinsic reasons of self-interest, empirical studies have shown that such a system is unlikely to be stable. These studies confirm Max Weber's hypothesis that an "order" is least stable when "adhered to from motives of pure expediency."[34] The studies show in particular that a "deterrence" or "social control" strategy for obtaining compliance with the law, which uses threats of punishment and punishment to motivate rule-following, is not a particularly good way to secure law-abiding behavior, let alone willing acceptance of the law and voluntary, ongoing cooperation with legal authorities, such as police officers and judges. As Tyler explains, although a deterrence strategy is to some extent effective and necessary, it is difficult to lower the rate of illegal behavior by attaching costs to it. Furthermore, efforts to create and maintain credible threats of punishment, via elaborate systems of surveillance to detect wrongdoing and the construction of prisons to punish wrongdoers, are very expensive. In addition to the inefficiency and expense of the "extrinsic" approach, reliance on it also undermines recognition of shared values, encourages behavior motivated by personal gains and losses, and leads to an antagonistic relationship between the public and the legal system.[35] In short, since governments have a limited ability to force people to obey the law, the brute exercise of power is not an effective way to govern.

What, then, is a better way to guarantee the stability of a political regime? Weber thought that regimes are most stable when they "[enjoy] the prestige of being considered binding, or, as it may be expressed, of 'legitimacy.'"[36] Once again, empirical research confirms Weber's hypothesis. Tyler explains that widely held perceptions of the legitimacy of legal authorities and institutions generate what David Easton calls a "reservoir of support" for these authorities and institutions—"something besides immediate self-interest," as Tyler puts it—and that this reservoir of support is central to effective governance.[37]

The psychologists measure perceptions of legitimacy in three ways: they ask whether people feel a sense of obligation to obey the law and the decisions of legal authorities, whether they regard authorities as trustworthy and have confidence in them, and whether they have "warm" feelings towards authorities.[38] The findings show that people who believe that legal authorities and institutions are legitimate are more likely to comply with the law than people who are concerned only about the risk of being punished. They are also more likely actively and willingly to cooperate with and assist these authorities and institutions.[39] Although there will always be some individuals who will respond only to threats of punishment, those who believe in the legitimacy of the system can be trusted, by and large, to "self-regulate", enabling governments to waste less time on deterrence and concentrate their efforts on pursuing important social goals such as education and job creation.[40]

In light of the social benefits of widespread willing deference to the law and cooperation with legal authorities, psychologists have investigated the factors shaping belief in the legitimacy of legal institutions and authorities, so as to facilitate a shift from a punishment-focused mindset to one involving "willingness to suspend personal considerations of self-interest," or "tak[e] actions that will help the

group to be effective and successful," even at some cost to oneself.[41] The key finding in this respect is that perceptions of legitimacy have a strong procedural basis. This correlation is known as the "procedural justice effect."[42] It has been confirmed in a range of settings,[43] most relevant of which for present purposes are the courts.

In particular, researchers investigating trust and confidence in the courts among members of the general public have found that these attitudes are shaped less by satisfaction with outcomes—people's agreement with the substance of the courts' decisions or their positive evaluation of the performance of the courts—than by their assessments of the fairness of judicial processes, where fairness is understood along the lines described in section 3 above, namely, as polite, respectful, attentive, trustworthy, and unbiased decision-making.[44] For example, Tom Tyler and Gregory Mitchell found that people who disagreed with the abortion decisions of the United States Supreme Court nevertheless deferred to them if they believed that the court followed fair procedures.[45]

Furthermore, these process-based considerations play an even greater role in shaping the attitudes of people who have had personal experiences with the courts. When lay principles of procedural justice are adhered to, this cushions the impact of negative outcomes, increases people's willingness to defer to judicial decisions, and positively influences their broader views about the legitimacy of legal authorities.[46] Tom Tyler and Yuen Huo explain this phenomenon by hypothesizing that courts are not perceived as simply resolving particular problems or issues. People generalize from their experiences with courts, and when judges make decisions in ways that are procedurally satisfactory to litigants, this has an impact beyond the immediate situation.[47] Conversely, perceived procedural injustice at the hands of the courts has a powerfully delegitimizing effect and contributes to distrust of the legal system.[48] To give just one example, Dutch researchers found that victims of crimes who felt the procedures used by the police and courts were unfair were more predisposed to break the law and had a more negative view of the judicial system than victims who felt the procedures were fair.[49]

One might expect procedural justice to matter less in criminal trials, where the stakes are high and defendants stand to be deprived of their liberty. As Jonathan D. Casper and two co-authors observe, "examining the role of the process and outcome variables in determining the satisfaction of defendants in felony cases would seem to present a difficult and powerful test of the theory that process really matters."[50] Yet, even when defendants have been convicted of a crime, and notwithstanding the fact that many criminal defendants are members of disadvantaged and marginal social groups, the beneficial effects of treating people in ways they regard as fair are confirmed. Casper and his co-authors analyzed the results of a study of felony defendants in the United States, who were generally young, minority, and male, and who had either been imprisoned or subjected to other penalties, and found that the perceived fairness of the decision-making process cushioned the impact of the negative outcome and helped to maintain respect for law and authority.[51] Other studies

in the criminal justice context have shown that perceptions of fair process affect such matters as inmate behavior in prisons, recidivism, and the behavior of domestic violence suspects.[52]

One might wonder why perceptions of fair process have these salutary effects. The answer to this question is as follows: it will be recalled from section 3 that treating people in ways they regard as fair communicates a message of favorable social identity, which in turn supports a sense of self-respect. It is this message and the attendant sense of self-respect that ultimately explain why perceptions of fair process lead people to view legal authorities and institutions as legitimate and to support and willingly cooperate with their group, even at personal cost to themselves. Understandably, people wish to maintain the feeling of self-respect that accompanies the sense of belonging to one's group. Conversely, the unfavorable status information or negative feedback from the group that is conveyed by perceived unfair treatment at the hands of a group authority decreases the willingness to comply and cooperate.[53] In short, the human psychological need to feel oneself a valued member of one's society, and the positive sense of self that accompanies the fulfillment of this need, are the key mediating factors explaining why perceptions of fair treatment play such an important role in encouraging the desire to uphold laws and legal institutions.[54]

We are now in a position to answer the challenge posed at the end of section 2: why should courts concern themselves with the appearance of injustice? Why, for instance, should a decision be set aside because a defendant was not provided with a proper hearing, notwithstanding the fact that a hearing was not necessary to arrive at the right decision? Is this not a matter of irrational pandering to the mistaken suspicion that the procedural irregularity led to an unjust outcome? The answer is as follows. Courts cannot always solve people's problems and they are often forced to deliver negative outcomes. This fact cannot be avoided, but it carries the risk that people will lose confidence in legal institutions and the legal system. This is a serious matter because lack of confidence erodes obedience to the law and discourages cooperation with legal authorities. Very negative outcomes, such as punishment, would seem to pose an even greater risk of disaffection. It would consequently be highly desirable if it were possible to deliver unwanted outcomes while minimizing any adverse effects on law-abiding behavior.[55] The social psychology research shows that this is possible. Views about the legitimacy of the law and the legal system, both among the public at large and those who have had personal encounters with the courts, are powerfully influenced by procedural matters. Furthermore, courts are able to control their own processes.[56] If courts use procedures that satisfy the "appearances" test, thereby ensuring that people feel that the process was fair, they make it easier for people to accept undesirable outcomes and decrease the likelihood that they will feel hostility towards the legal system and revert to self-interested modes of behavior.[57] Indeed, the more negative the outcome, the more important the "appearance" of justice becomes for purposes of encouraging the trust and confidence in legal authorities and institutions and the associated internalization of the legal rules and the law-abiding behavior that make the stable functioning of society possible.

5. Empirical, rather than Normative?

In section 4 of this article I explained why it is desirable for courts to follow procedures that are widely regarded as fair, relying on empirical findings about the social benefits of satisfying people's procedural expectations. Tyler and Huo describe this general approach as "psychological jurisprudence," since it takes the view that legal choices should be guided by empirically supported evidence relating to human psychology.[58] While it will be obvious that I agree with Tyler and Huo's claim that that we should use an "accurate model of the psychology of the person"[59] in the design of legal institutions and arrangements, they make a further claim with which I disagree. They say that psychological jurisprudence "provides a distinctly empirical, rather than normative, perspective on the problems presented by the law."[60]

Although Tyler and Huo do not elaborate on the sharp disconnect they perceive between empirical and normative perspectives, in other work Tyler draws a similar distinction between a social scientific and a normative perspective on legitimacy and develops it in more detail. He explains that a social scientific perspective on legitimacy uses psychological methods of data collection to investigate the factors that cause people to feel under a sense of obligation to obey the law, while a normative perspective asks whether the law ought to be obeyed. Tyler explains that he takes the social scientific perspective and does not consider whether the law ought to be obeyed.[61] Instead, he wishes to make a contribution to the achievement of "effective governance," or the maintenance of "social order in the community" by "providing guidance" about the legal arrangements that will motivate people to behave in the law-abiding and cooperative ways desired by authorities.[62]

Other psychologists working in the field of empirical justice studies make related claims. Kjell Törnblom, for instance, contrasts a social psychological approach to justice, which involves scientific investigation of people's perceptions of justice, with philosophers' normative arguments about which political or economic system is most just.[63] Törnblom explains that psychologists are concerned to describe people's justice evaluations, as well as discover the antecedents of these evaluations and their attitudinal and behavioral consequences.[64] Psychologists also wish efficiently to apply "social psychological knowledge about … justice processes … for the purpose of reducing conflict."[65] Whereas the descriptions and explanations offered by psychology are "important," Törnblom dismisses the philosophical enterprise on the grounds that "justice is in the eye of the beholder," quoting other psychologists to the effect that attempting to define justice is a "hopeless" task and that "there is no true or essential justice."[66]

One problem with this set of claims is the non-cognitivist assumption embedded (though not defended) in them that moral judgments are expressions of attitudes and therefore lack truth-value. This assumption lies behind the contrast between the

"hopeless" philosophical task of "defining" justice or inquiring into its true nature and the "important" empirical study of what people believe about justice and the causes and effects of their beliefs. Empirical study is presumably thought to be important because the questions it asks have objective answers, answers which can then be applied to the solution of social problems. Apart from noting that this is itself a philosophical attempt at "definition," since it is a conceptual claim about the difference between moral judgments and factual judgments, there are many reasons to doubt the soundness of this distinction, especially given the crudeness of the way in which it is drawn by the psychologists. In fact, as more sophisticated versions of non-cognitivism insist, non-cognitivism is not necessarily committed to the claim that reason has no role to play in moral judgments.[67] Since these problems are adequately dealt with by those who have contributed to our understanding of this meta-ethical issue, I will not pursue this issue further here.

Instead, I wish to call attention to the implausibility of Tyler and Huo's claim that their empirical findings have nothing to do with morality. They apparently believe that they are merely contributing to a project of social control by conveying factual information about the attitudinal and behavioral consequences of treating people in ways widely regarded as fair, and that no moral importance (even of a non-cognitivist kind) attaches to this endeavor. Instead, it is merely a matter of providing a morally neutral, technocratic device for maintaining social order, suited for use by authorities who wish to govern effectively, comparable, say, to practical instructions for assembling a bed.

This view of the nature and significance of the empirical findings seems to me quite implausible. In so far as the psychological knowledge is of practical importance—and Tyler and Huo clearly think it is—this can only be because the "recipe" that it offers for stability achieves its effects in ways that are morally desirable. I explained in the introduction to this article that I do not endorse the use of procedures to stabilize unjust societies. As stated there, I am concerned only with societies in which the laws are just and in which support for the laws is desirable. Now I am making a different point, which is that even if we confine ourselves to just societies, not all methods for stabilizing them are equally acceptable. Citizens might be brainwashed into good behavior in just societies, but conveying factual information about how to do that could hardly be seen as important, and no one could claim to be playing a part in the achievement of effective governance by showing authorities how to brainwash people. Of course, that is not the route to effective governance that Tyler and Huo recommend. They recommend treating people in ways widely regarded as procedurally fair, thereby encouraging trust and confidence in legal authorities and institutions. But this is not a morally neutral, technical method for stabilizing society. On the contrary, as I will now argue, this particular route to stability is virtue-promoting, at any rate in societies in which the legal rules are just. This in turn means that, contrary to Tyler and Huo's claim, their empirical findings are very important from the perspective of morality, explaining why

authorities in just societies should act on the psychologists' guidance.

In order to show this, I need to return to the distinction between extrinsic and intrinsic motivations to obey the law, the former revolving around the instrumental, self-interested motives of avoiding punishment and obtaining rewards, and the latter consisting in a feeling of obligation to obey the law as evidenced by a willingness to obey even when self-interest inclines otherwise. When people internalize just legal rules, see them as deserving of support, and are able to resist the temptation to disobey the law even when obedience comes at a personal cost, this disposition is, of course, stabilizing for society, but it is also much more than that. Trustworthiness, honesty, generalized cooperativeness, refraining from free-riding, a sense of obligation to obey just laws: these are firm and effective dispositions to reason and behave in certain ways, making those who possess these dispositions morally admirable. They are virtues—social virtues.

Indeed, I would go further, and make the more controversial point that the social virtues with whose determinants the psychologists are concerned are an essential aspect of human well-being or flourishing—that we need these virtues if we are to flourish as the kinds of creatures we are. Although it is not possible to defend this claim in detail here, I will provide some brief comments in its support.

First, human beings are social animals who need to live in groups, and the continued existence and functioning of these groups depends on dispositions such as trustworthiness and the willingness to comply with the group's norms and cooperate with others in the group, even at personal cost. This means that these virtues are normal for human beings. Rawls makes some plausible observations in this connection, observing that people who never do what is right except for reasons of self-interest lack certain natural attitudes, because they are without the bonds of friendship, affection, and mutual trust. They are also incapable of certain moral feelings "of a particularly elementary kind," such as feelings of resentment and indignation.[68] Although they may feel angry and annoyed when they are badly treated, they cannot feel resentment and indignation, because these are moral emotions that exist only against the background of acceptance of the principles of justice. According to Rawls, such people therefore lack "certain fundamental attitudes and capacities included under the notion of humanity."[69]

Secondly, it is plausible to think that people who are willing to put aside self-interest so as to comply with just rules benefit from this disposition and, indeed, that there is a connection between this point and the point made in the preceding paragraph: the fact that this disposition benefits us is connected with the fact that we need it to lead a characteristically human life. Rosalind Hursthouse argues convincingly to this effect in an analysis of the role of the virtues in an ethical life.[70] Hursthouse does not make the implausible claim that acting virtuously will be of benefit on each and every occasion, since it is obvious that agents who act virtuously will sometimes suffer serious losses and that immoral people will on occasion profit from their injustice. Hursthouse's claim is rather that the

virtuous generally or "overall" do better than people who are immoral.[71]

In this connection, she refers to Philippa Foot's and R. M. Hare's arguments that a life of immorality has substantial costs.[72] For instance, immoral people will be unable to gain the trust of others unless they manage to hide the fact that they are only ever motivated by their own interests. This means that they will need to lead a life of pretense and hypocrisy, paying what Foot describes as a "colossal price in vigilance."[73] Hursthouse points out that parents implicitly accept the soundness of these arguments when they provide their children with a moral education. Good parents, who want to do what is good for their children, so that they may flourish and lead rewarding lives, do not bring their children up to be entirely self-interested. On the contrary, they try to curtail their children's selfish inclinations, and to develop their inclinations to act generously and fairly, and they do this not for the sake of themselves or other people, but for the sake of their children, because they realize that this is the route to a satisfying human life.[74] Hursthouse does not go so far as to say that arguments such as those put forward by Foot and Hare will have the power to convince an immoral person to become virtuous. On the contrary, she concedes that these arguments will only be found convincing by someone who already understands how human life works and who knows the role played by the virtues in a characteristically human life.[75] Still, this does not undermine her point that the lives of people who are motivated only by self-interest can be expected to be bleak and unsatisfying.

We are now in a position to understand why Tyler and Huo are wrong when they assert that their psychological findings have nothing to do with morality. I have argued that dispositions such as trustworthiness, honesty, cooperativeness, refraining from free-riding, and a sense of obligation to obey just laws even at personal cost to oneself are virtues, and I have also suggested that they contribute to a flourishing human life. Furthermore, I have explained that the empirical research on the psychology of procedural justice is a source of knowledge about the institutional arrangements that foster these virtues, since it tells us that public satisfaction with the procedures used by decision-making authorities plays a central role in their development. It is difficult to imagine how this information could be thought to be devoid of moral implications. How could it not be morally good for people willingly to support just laws and institutions and how could we not have moral reason to put in place arrangements that are known to generate this kind of support? This is not to say that the psychology of procedural justice provides us with the full picture. No doubt there are other institutional contributors to the cultivation of the social virtues, such as participation in the cross-cutting complex social networks and associations that promote social capital, as argued by Robert Putnam with the support of extensive empirical evidence.[76] Putnam's work and that of others on the roots of cooperative behavior and norms of trust and reciprocity is morally important for the same reasons as the work on the psychology of procedural justice: it provides us with additional pieces in the jigsaw puzzle, delivering a more comprehensive understanding of how to develop people's capacity to reason in non-self-interested ways

and foster the desire to uphold just laws and institutions.

Finally, I will end with another reason for rejecting the psychologists' sharp distinction between normative and empirical perspectives. As John Doris and Stephen Stich point out, both philosophers and psychologists study moral psychology and there is considerable potential for "cross-pollination" between their different approaches to the subject. One area of potentially fruitful interaction involves the use of empirical research to assess the plausibility of a moral theory by investigating the degree of empirical support for the claims about moral psychology that the moral theory makes or presupposes. Empirical support for the psychological claims that inform a moral theory is, of course, not decisive in evaluating the theory, but it is one relevant consideration.[77]

I will give a concrete example of how this approach might work, referring specifically to the empirical work discussed in this article, and showing how it is relevant to the assessment of a particular normative theory, that of Rawls' theory of justice as fairness. Consider the following line of reasoning, on which Rawls relies in defending his theory of justice as fairness. First, Rawls argues that a theory of justice should be tested not only by whether it is valid, but also by whether people would be motivated to act in accordance with its requirements were it to be embodied in society. According to Rawls, a conception of justice will be pro tanto defective if people are not motivated to do what it requires.[78] I will call this the "motivational test." Rawls correctly notes that we need knowledge of what he calls the "laws of moral psychology"[79] in order to assess whether a conception of justice passes this test. However, he does not refer to empirical findings on this matter. Instead he proceeds via a priori philosophical psychology. He claims—and this is the second step in his argument—that self-respect is a powerful motivator of willing support for just institutions. According to Rawls, this is so because self-respect reduces the tendency to envy and the destructive forms of behavior associated with it.[80] He also claims that a "secure sense of [one's] own worth … forms the basis for the love of humankind."[81] Thirdly, Rawls argues that self-respect depends upon and is encouraged by certain features of social institutions, namely, those that lead people to feel that their status in society is secure.[82] Finally, he argues that a society organized around his own conception of justice, justice as fairness, and, in particular, the guarantee that his conception provides for equal basic rights and liberties and fair equality of opportunity, will do a better job of supporting self-respect than a society embodying alternative principles, such as utilitarianism, and therefore that his theory of justice does better on the motivational test and is to that extent more attractive.[83]

It will be evident that the empirical research on the psychology of procedural justice confirms two of Rawls's speculative claims: the claim that self-respect is supported by features of social institutions that lead people to feel that their social status is secure and the claim that self-respect encourages the desire to abide by just laws. This confirmation increases the attractions of Rawls' theory, albeit only to a limited extent, since the empirical evidence supports only some of its background assumptions, not the central claim that justice

as fairness would support self-respect more effectively than alternative conceptions of justice. That, however, is not the key point for present purposes, since my reason for mentioning the empirical findings is not to make a contribution to the debate about the adequacy of Rawls' theory of justice. Instead, I refer to Rawls merely to provide an example of a theorist whose normative approach is heavily tied to certain claims about moral psychology, to point out that any evaluation of his approach would need to consider the empirical adequacy of these claims, and to highlight the fact that we already have some of the empirical resources required for this task. If this analysis is accepted, it implies that we should reject Tyler and Huo's assertion that the empirical work of social psychologists and the normative work of philosophers inhabit separate, hermetically sealed universes.

6. Conclusion

If one evaluates procedures only in terms of the accuracy of the legal outcomes to which they lead, it is not clear why the appearance of injustice should be condemned. However, once one understands that judges can play a role in sustaining human "sociability" by conducting trials in ways that speak to people's procedural concerns, the moral importance of perceptions becomes much easier to explain. Empirical evidence shows that those who have been treated by legal authorities in ways that are widely regarded as fair are more likely to feel included in their community and to enjoy a sense of self-respect, which in turn makes them more likely to view authorities as legitimate, to cooperate with them, and to obey the law out of a sense of obligation, notwithstanding the fact that obedience may come at a personal cost. Since in a just society these are morally admirable dispositions and motivations, which are also arguably part of a flourishing human life, there is a sound moral justification for the judicial practice of avoiding perceptions of procedural injustice, regardless of whether any substantive injustice to the defendant would result from failing to satisfy the public's procedural expectations in a particular case.

Notes

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1 R v. Sussex Justices; ex parte McCarthy [1924] 1 KB 256, 259.

2 David Miller makes related points in regard to distributive justice. See *Principles of Social Justice*, 42–43.

3 See Prinz, "Empirical Philosophy," 189; Levy, "Empirically Informed Moral Theory," 7.

4 See Fox, "Psychological Jurisprudence," 237.

5 Rawls, "Law of Peoples," 60.

6 See Spigelman, "Principle of Open Justice," 154.

7 Beccaria, *On Crimes and Punishments*, 37; Bentham, Works, vol. 9, 493.

8 Bentham, *Works*, vol. 4, 316.

9 Spigelman, "Principle of Open Justice," 150.

10 The Sixth Amendment guarantees accused persons the right to a public trial, while the First Amendment confers the right to attend trials on the public and the media. See Richmond Newspapers, Inc., v. Virginia, 448 U.S. 555 (1988).

11 For a comparative discussion, see McLachlin, "Courts," 6–11; Spigelman, "Principle of Open Justice," 150–153, 158–164.

12 *Richmond Newspapers*, 448 U.S. 555, 571–2 (1988).

13 R v. Pat Arrowsmith (1974) 60 Cr. App. R. 211, 220.

14 Ibid.

15 The reasonable apprehension test for the appearance of bias is used in Australia: Ebner v. Official Trustee in Bankruptcy (2000) 205 CLR 337, 344. In England, the fair-minded observer must conclude that there was a real possibility of bias: Porter v. Magill [2002] 2 AC 357, 495.

16 See McPherson v. McPherson [1936] AC 177.

17 See Galligan, *Due Process*, 72; Bayles, *Procedural Justice*, 22, 133–134.

18 See Meyerson, "Full Answer and Defence."

19 See Thibaut and Walker, *Procedural Justice*, chaps. 8, 9.

20 See Vidmar, "Origins and Consequences," 881, 889.

21 See Barrett-Howard and Tyler, "Procedural Justice in Allocation Decisions," 296–304.

22 Vidmar, "Origins and Consequences," 891.

23 Tyler, *Why People Obey*, 284.

24 See Koper et al., "Procedural Fairness," 315.

25 Tyler, "Value-Expressive Effects," 333–344.

26 See Tyler and Blader, "Group Engagement Model," 350–351.

27 Vidmar, "Origins and Consequences," 890.

28 See Tyler and Blader, *Cooperation in Groups*, 92, 102.

29 See ibid., 171; Koper et al., "Procedural Fairness," 314–315.

30 Tyler and Lind, "Procedural Justice," 78.

31 See Meyerson, "Full Answer and Defence."

32 See Hart, *Concept of Law*, 55–57.

33 See ibid., 116.

34 Weber, *Theory*, 125.

35 For a review of the problems with the social control model, see Tyler, "Legitimacy and Criminal Justice," 309–311. See also Tonry, "Purposes and Functions," 28–30, for a summary of the evidence on the deterrent effects of criminal sanctions.

36 Weber, *Theory*, 125.

37 Easton, "Analysis of Political Systems," 399; Tyler, *Why People Obey*, 281.

38 See Tyler, "Legitimacy and Criminal Justice," 314–315.

39 See Tyler, *Why People Obey*, 271.

40 See Tyler and Huo, *Trust in the Law*, 159–160; Tyler, "Legitimacy and Criminal Justice," 330.

41 Tyler and Huo, *Trust in the Law*, 102; Tyler, *Why People Cooperate*, 21.

42 Tyler, "Value-Expressive Effects," 333.

43 See Tyler, "Legitimacy and Criminal Justice," 319–323.

44 See Tyler and Huo, *Trust in the Law*, 177–178, 185–188. See also Warren, "Public Trust," 14.

45 See Tyler and Mitchell, "Legitimacy and Empowerment," 797–799.

46 See Tyler and Huo, *Trust in the Law*, 188–195.

47 See ibid., 130–136.

48 See Tyler, "Psychological Perspectives," 382; Tyler and Huo, *Trust in the Law*, 131.

49 See Modde and Vermunt, "Effects of Procedural Unfairness," 111.

50 Casper, Tyler, and Fisher, "Procedural Justice," 484.

51 See ibid.; Tyler, Casper and Fisher, "Maintaining Allegiance," 629–652.

52 See Tyler, "Legitimacy and Criminal Justice," 326.

53 See Tyler and Blader, *Cooperation in Groups*, 148, 164.

54 See Tyler and Blader, "Group Engagement Model," 353–354.

55 See Tyler, Casper, and Fisher, "Maintaining Allegiance," 643; Tyler and Huo, *Trust in the Law*, 157.

56 See Tyler, "Legitimacy and Criminal Justice," 319.

57 See ibid., 319, 322.

58 Tyler and Huo, *Trust in the Law*, 209.

59 Ibid.

60 Ibid.

61 See Tyler, *Why People Obey*, 286–287.

62 Ibid., 287; Tyler, Jackson, and Bradford, "Procedural Justice and Cooperation," 4011; Tyler, *Why People Obey*, 287.

63 See Törnblom, "Social Psychology," 177, 190.

64 See Vermunt and Törnblom, "Distributive and Procedural Justice," 1–2.

65 Ibid., 10.

66 Törnblom, "Social Psychology," 177–178.

67 See, e.g., Gibbard, *Wise Choices, Apt Feelings*.

68 Rawls, *Theory of Justice*, 488.

69 Ibid.

70 See Hursthouse, *On Virtue Ethics*, 167.

71 Ibid., 171.

72 See ibid., 178.

73 Foot, "Moral Beliefs," 100.

74 See Hursthouse, *On Virtue Ethics*, 175–177.

75 See ibid., 189–191.

76 See Putnam, *Making Democracy Work*.

77 See Doris and Stich, "Moral Psychology."

78 See Rawls, *Theory of Justice*, 138, 455.

79 Ibid., 138.

80 See ibid., 534.

81 Ibid., 501.

82 See ibid., 544–545.

83 See ibid., 178–181, 498–501.

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