

Trust and Confidence in Criminal Justice

by Lawrence W. Sherman

riminal justice in America today is a paradox of progress: While the fairness and effectiveness of criminal justice have improved, public trust and confidence apparently have not.

Criminal justice is far less corrupt, brutal, and racially unfair than it has been in the past. It is arguably more effective at preventing crime. It has far greater diversity in its staffing. Yet these objectively defined improvements seem to have had little impact on American attitudes toward criminal justice.

Understanding this paradox better work but low marks is central to improving public trust and confidence in the criminal justice system.

How Low Is Public Confidence?

Gallup polls over the last few years have consistently found that Americans have less confidence in the criminal justice system than in other institutions, such as banking, the medical

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Police

about the author

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system, public schools, television news, newspapers, big business, and organized labor.¹

The most striking finding in the Gallup poll is the difference between the low evaluation of "criminal justice" and the high evaluation given to the police and the Supreme Court. Other sources of data show similar attitudes: Confidence in local courts and prisons is far lower than it is for the police.² These large differences suggest that Americans may not think of police in the same way as they do the criminal justice system.

The Racial Divide

A 1998 Gallup poll reports little overall demographic difference among the respondents saying they had confidence in the criminal justice system. But what is most clear is the difference in opinion

Black

Prisons Criminal Justice

System

25%

between whites and blacks about the individual components of the criminal justice system and especially the police. Whites express considerably more confidence in the police, local court system, and State prison system than blacks (see exhibit 1).

Race, Victimization, and

Punishment. Racial differences also appear in rates of victimization and punishment: Blacks are 31 percent more likely to be victimized by personal crime than whites and twice as likely as whites to suffer a completed violent crime.³

Young black males are historically 10 times more likely to be murdered than white males.⁴

Arrest rates for robbery are five times higher for blacks than for whites; four times higher for murder and rape; and three times higher for drug violations and weapons possession.⁵

Blacks are eight times more likely to be in a State or Federal prison than non-Hispanic whites (and three times more likely than Hispanic whites). Almost 2 percent of the black population, or 1 of every 63 blacks, was in prison in 1996.⁶

Race and Neighborhood. What these data fail to show, however, is the extent to which the racial differences in attitudes, victimization, and punishment may be largely related to more blacks being the residents of a small number of highcrime, high-poverty areas concentrated in a small fraction of urban neighborhoods. This is the case even though Harvard University



Court

U.S. Supreme Local Courts

Source: The Gallup Organization, "Confidence in Institutions," retrieved from the World Wide Web site http://www.gallup.com, October 10, 2000.

Exhibit 1: Confidence Ratings for Criminal Justice System Agencies, by Race

sociologist Orlando Patterson has estimated that only 1 in every 30 black adults resides in these highcrime, high-poverty areas; the proportion is higher for children.

What we may understand as a problem of race in America may largely reflect conditions in those neighborhoods that are generalized by both blacks and whites to conditions of the larger society.

Due to limited national data, it is difficult to determine what precisely drives the lower levels of confidence in criminal justice among blacks, but insights from city-by-city analysis suggest two conclusions:

There is no race-based subculture of violence.

Blacks and whites who live in neighborhoods with similar conditions have similar views on the legitimacy of law. To the extent that race is associated with attitudes toward law, it may be a reflection of the greater likelihood that blacks reside in poverty areas.

There is no race-based hostility to police in highcrime areas. High levels of dissatisfaction with police are endemic to high-crime areas. Whites residing in such areas express attitudes just as hostile as blacks toward police.⁷ The distrust of police in high-crime areas may be related to the prevalence of crime rather than to police practice. If negative attitudes are driven by police practice, it may be because those practices fail to prevent crime rather than because police presence or behavior is excessive. Or it may be that the practice of policing in such areas offers less recognition and dignity to citizen consumers than is found in lower crime areas.

The personal opinions of the survey respondents are consistent with a major theory about the declining public confidence in all government—not just criminal justice—in all modern nations, not just the United States. The concerns arise from the decline of hierarchy and the rise of equality in all walks of life. The rise in egalitarian culture increases the demand for government officials to show more respect to citizens.

Strong Demands for Change

The findings and responses from a random digit-dialing telephone survey of 4,000 residents of 10 northeastern States in 1998 found that more than 80 percent—four out of five respondents—preferred the idea of "totally revamping the way the [criminal justice] system works" for violent crime; 75 percent said the same for all crime.⁸ The responses varied little from State to State or from one demographic group to another. The majority of respondents believed that:

 Victims are not accorded sufficient rights in the criminal justice process.

- Victims are not informed enough about the status of their cases.
- Victims are not able to talk to prosecutors enough.
- Victims should be able to tell the court what impact the crime had on them, but most victims do not get that chance.
- Offenders, even if jailed, should reimburse victims for the cost of the crime.
- Offenders should acknowledge their responsibility for the crime.
- Victims should have the opportunity to meet with the offender to find out why the crime occurred and to learn

whether the offender accepted responsibility.

- Ordinary citizens, not courts, should set penalties for nonviolent crimes.
- Drug treatment should be used more widely for drugusing offenders.

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Egalitarianism in Modern Culture: Raised Expectations, Reduced Trust

Americans' trust in government has declined sharply in the last quarter century.¹⁰ A similar loss of trust has been found in 18 other democracies. Citizens now expect higher levels of recognition, respect, and status from the government. Criminal justice serves as a flashpoint for this change in citizen attitudes because so many Americans have contact with the criminal justice system and because the hierarchical design of criminal justice institutions juxtaposes so starkly with the egalitarian demands of the public.

As the spread of equality has combined with growing freedom from want, political culture has shifted away from Puritan views of a *hierarchical* communal democracy to Quaker views of a more *egalitarian* individualistic democracy.



Indeed, the consistently greater support for police than for courts may result from a perception of police as egalitarian individualists (the new cultural ideal) while judges are seen as bossy conformists (the outdated ideal).

The massive three-decade decline of public trust in liberal democratic governments suggests a deeper paradox of success: As democracies become more materially successful and better educated, the perceived need for governance declines and expectations of government for appropriate conduct increase.¹¹ The crisis of government legitimacy has thus been prompted less by declining quality of government conduct than by increasing public dissatisfaction with institutions in general, driven by what Ronald F. Inglehart, Professor, University of Michigan, calls "postmaterialist values."12

Social changes taking place around the globe appear to be resulting in challenges to the legitimacy of virtually all forms of social hierarchy of authority (although not hierarchy of wealth)—of husbands over wives, doctors over patients, schoolteachers over students and parents, parents over children, and government officials over citizens. This evolution may have led to widespread preference for the recognition of individual dignity over the recognition of communal authority.¹³

Thus, what Robert J. Sampson, Professor of Sociology, University of Chicago, and other scholars refer to as "legal cynicism"— the extent to which people feel that laws are not binding—is not the product of a criminal subculture.¹⁴ It is a 400year-old Christian political theology that has become globally accepted across people of all religions in a more egalitarian and individualistic modern culture.

In such a world, people are less likely to obey the law out of a sense of communal obligation, and more likely to obey laws they support through a personal sense of what is moral.

Trust and Recognition

What changing culture may be creating is a world in which people trust *laws* but not *legal institutions*. This new world may be one in which trust in criminal justice is no longer automatic; it must be earned every day, with each encounter between legal agents and citizens.

The research of Tom R. Tyler, Department of Psychology, New York University, shows that Americans—especially members of minority groups—are extremely sensitive to the respect they perceive and the procedures employed when they come into contact with criminal justice.¹⁵ Tyler's evidence suggests that in building citizen trust in the legal system, it may matter less whether you receive the speeding ticket than whether the police officer addresses you politely or rudely during the traffic stop. Similarly, sentencing guidelines that punish possession of crack more harshly than possession of powdered cocaine may discriminate against blacks. But dissatisfaction may be greater with some police officers engaged in drug enforcement who treat suspects and arrestees like people who are enemies rather than like people who are equal fellow citizens.

Tyler concludes that the procedural justice perceived in treatment by legal officials affects the level of trust citizens have in government.¹⁶ That level of trust, in turn, affects the pride we have in our government and the degree to which we feel we are respected by other members of our democracy—including the government.

Tyler further concludes that the odds of citizens reaching the conclusion that the law is morally right are much higher when citizens feel that the law has given each of them adequate recognition and respect.

Rather than creating a willingness to *defer* to the power of the law,

Consensus thus appears to be a much better fit to the new political culture. Standing up when judges enter a room and obeying orders barked out by police, for example, are procedural forms that may imply officials are more important than citizens. Such forms may do more to undermine legal trust than to build respect for the law.

Tyler suggests that respectful treatment creates a stronger *consensus* about what is moral and what the law must be. The consensus model assumes more equality than the deference model on which our legal institutions were designed.¹⁷

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Fitting Legal Institutions to the Culture: The Canberra Experiments

For all Americans, regardless of race, the central cause of declining trust may be the misfit of hierarchical legal institutions in an egalitarian culture. In many ways, citizens may experience the conduct of judges, prosecutors, and police as being overly "bossy" and unnecessarily authoritarian.

Results of experiments in Canberra, Australia, suggest that an egalitarian, consensual procedure of stakeholder citizens deciding the sentence for a crime creates more legitimacy in the eyes of both offenders and victims than the hierarchical, deferential process of sentencing by a judge.¹⁸

The experiments compared traditional court sentencing of youthful violent and property offenders to an alternative community justice conference making the same decisions.

Offenders who were sent to conferences were far less likely than offenders who were sent to traditional court to say that they were pushed around; disadvantaged by their age, income, or education; treated as if they were untrustworthy; or not listened to. They also were more likely to report that their experience increased their respect for the justice system and the police, as well as their feeling that the crime they had committed was morally wrong.

Victims also were far more satisfied with community justice conferences

than with court proceedings. Much of this difference may be because most victims of criminals sent to court were never informed of the offenders' court appearances, either before or after sentencing. The victims invited to community justice conferences with offenders, in sharp contrast, gained increased trust in police and justice, as well as decreased fear of and anger at the offender. (For more details, see "Alternative Community Justice Conferences," page 28.)

Building Trust One Case at a Time

The Canberra experiments suggest the highly personal nature of citizen trust in criminal justice. The *personal* legitimacy of legal agents may depend on a leveling of distinctions in rank between citizen and official.

As Albert J. Reiss, Jr., Professor Emeritus, Sociology Department, Yale University, observed, the legitimacy of police authority in the eyes of citizens varies widely from one situation to the next.¹⁹ Thus, officials must earn the legitimacy of their authority one case at a time.

The most dramatic demonstration of this principle is the finding that how police make arrests for domestic violence affects the rate of repeat offending. Raymond Paternoster, Ph.D., University of Maryland, et al. demonstrated that offenders who were arrested for domestic violence and who perceived that the police officers' arresting procedures were fair were less likely to repeat the offense than offenders who perceived the arresting procedures as unfair.²⁰ Actions that constituted "procedural justice" included the police taking the time to listen to both the offender and the victim, not handcuffing the offender in front of the victim, and not using physical force.

As exhibit 2 shows, the risk of repeat offending was 40 percent for offenders who had a low perception of police procedural fairness, but only 25 percent for those who perceived a high level of police fairness. The estimate of offending risk took prior levels of violence into account; hence the findings shown in exhibit 2 increase our confidence that *how* the police make an arrest may affect the crime rate (much of which comes from repeat offending) through trust and confidence in the criminal justice system.

Reducing Complaints Against

Police. Other tests of the hypothesis that trust in criminal justice comes from egalitarian procedures can be seen in actions that have been shown to reduce complaints against police.

In the 42nd and 44th precincts in the Bronx, complaints reached a 10-year high in 1996. But after the precinct commanders instituted a program to promote respectful policing and improve police relations with community residents, complaints dropped dramatically. Among the elements of the new program was vigorous training for officers on how to treat citizens respectfully, zealous monitoring of complaints, and followthrough with consequences for officers who received complaints.

In addition, the simple elimination of the precinct's high desk and bar in front of the desk in the reception area helped the precinct present a less hierarchical face to the community. Research on the effects of the strategy, conducted by the Vera Institute of Justice, found that citizens began to perceive the police as responsive to community concerns.²¹

The second test of the procedural equality theory comes from a community with a population of almost one million; 55 percent of the population is African American.

Complaints dropped in this department of 1,400 officers when a new procedure for traffic stops was initiated in 1997–99. The procedure, called "Take Away Guns" (TAG), was one part of a larger strategy to reduce gun violence. One of the first steps the department took was to increase traffic enforcement—a 400-some percent increase—so

Exhibit 2: Repeat Offending After Arrest for Domestic Violence by Perceived Fairness of Arrest Process



Source: Paternoster, R., R. Brame, R. Bachman, and L.W. Sherman, "Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault," *Law & Society Review*, 31(1997): 185.

Alternative Community Justice Conferences

In the Canberra experiments, the police invite victims, offenders, and their respective supporters to a meeting in which the offenders must not—for these purposes dispute their guilt. At the meetings, everyone sits in a circle to discuss the harm the crime has caused, acknowledge the pain and emotional impact of that harm, and deliberate democratically as to how the offenders should repair that harm.

The egalitarian proceedings begin with the police officer moderating the proceedings, offering only guestions, not answers. For example, what did the offender do? How did it hurt the victim? How does the victim feel about that hurt? How do the victim's friends and family feel? How do the offender's family and friends feel about what has been said? What would be the right way for the offender to repay the debt to the victim and to society? Does everyone agree? Is there anything the offender wants to say to the victim (sometimes the offender says "I'm sorry")? Is there anything the victim wants to say to

the offender (possibly "I forgive you")?

One of the most important parts of the proceedings is that everyone is allowed to talk, just as in a Quaker meeting, but no one person dominates speech, as might happen in a Calvinist church or in an Anglo-American courtroom. Emotions can be intense at the conferences—unlike the restraint valued by Puritan cultures and Western courts.

No Lawyers. Lawyers are not allowed to attend the conferences as legal advocates for either an offender or the State, although they may attend as personal supporters. They are always on call, ready to act to protect anyone whose rights may seem abused. But as long as the victim-offender consensus is under discussion, everyone in the circle has equal authority, regardless of age or education.

Extra Time Required. A community justice conference takes, on average, about 70 minutes to resolve. A similar case in traditional court may take 10 minutes spread across several different appearances, which have no emotional significance for victim or offender, and thus leave citizens feeling like cogs in a wheel. A community justice conference is about the people present rather than the legal formalities. People come only once, prepared to stay until the case is resolved.

Trust in Justice. Research shows that sentences imposed in the community justice conferences and the traditional court process were fairly similar despite the major differences in the decisionmaking procedures employed.¹ But the conferences produced far better results in terms of citizen respect for legal institutions.

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that police had an opportunity to explain the program at each traffic stop and distribute a letter from the district police captain explaining the program. The letter contained the captain's phone number and invited citizens to call the captain with complaints or questions. Officers were trained to be very polite in explaining the program to drivers and then asking permission to search the car for guns.

The program not only received a high rate of compliance with the requests, but also received praise from the drivers stopped who approved of the efforts to get guns off the street. Over the first 2 years of the program, both gun violence and citizen complaints of excessive force by police dropped substantially.

In sum, a growing body of theory and evidence suggests that it is not the fairness or effectiveness of decisions criminal justice officials make that determines the public's level of trust. Changes in modern culture have made the *procedures* and manners of criminal justice officials far more important to public trust and left officials out of step with modern culture.

This explanation gains further support from scholarship on the effect of television and other communications media on the nature of authority and trust in government. For despite Tyler's focus on personal contacts with criminal justice, most citizens have little if any personal contact with legal officials. For this majority of Americans, the level of trust in criminal justice may depend on what they hear about criminal In sum, a growing body of theory and evidence suggests that it is not the fairness or effectiveness of decisions criminal justice officials make that determines the public's level of trust. Changes in modern culture have made the *procedures* and manners of criminal justice officials far more important to public trust and left officials out of step with modern culture.

justice encounters with other citizens, a little-studied area. But it also may depend on how legal agencies are portrayed in entertainment and news media.

Authority and Media Celebrity

The future authority of the criminal justice system may well depend on how the system appears not just to those directly involved in the system, but to all citizens. That, in turn, may depend heavily on how criminal justice manages its image in the electronic media. Legal historian Lawrence Friedman notes that modern culture has changed the very nature of authority from vertical (where people look up to leaders in high position) to horizontal (where people look in to the center of society to find leaders who are celebrities, defined by the number of people who recognize their names and faces). "Leaders are no longer distant, awesome, and unknown; they are familiar figures on TV....

The horizontal society is [one in which] the men and women who get and hold power become celebrities" and the public come to know them, or think they know them, through the media. "By contrast," Friedman writes, "traditional authority was vertical, and the higher up the authority, the more stern, distant, and remote it was."²²

A celebrity culture creates still another paradox: Americans now feel more personal connections with celebrities living far away than they do with legal officials in their own hometown. Just as many people felt more emotional loss at the death of Princess Diana than at the death of a neighbor, the celebrity culture makes us feel personal connections to people we do not know.

Thus, for all the programs designed to foster community policing or community prosecution with legal officials in the neighborhood, Americans still are more likely to form their impressions of criminal justice from vicarious contact through friends or through television shows than from personal experience with their own legal system. The evidence is clear: On a Wednesday night when police convene a neighborhood meeting in a church basement, more local residents are home watching television than attending the meeting.

We may well ask if there are any celebrities of American criminal justice, and if so, who they are— The Chief Justice of the Supreme Court? The director of the FBI? Probably not. These positions appear to fit Friedman's characteristics of traditional authority: stern, distant, and remote. Television's Judge Judy, on the other hand, is an internationally recognized celebrity, with far greater name-face recognition than the traditional authority figures.

Unfortunately, the entertainment values of the television business conflict with the core values of legal institutions. What sells TV audiences is conflict and putdowns, tools Judge Judy uses to portray a rude, in-your-face (but perhaps egalitarian), power-control image of the bench. Audiences find this fun to watch, although Judge Judy may confirm their worst fears, leaving them reluctant to have anything to do with the legal system.

The difficulty in using celebrity power to send messages about the trustworthiness of criminal justice is the clash of cultures between law and entertainment. The reticence of the legal culture conflicts with the chattiness of celebrity culture.

One can imagine a legal official appearing weekly on a talk show with a huge audience, saying things that could help shore up public faith in criminal justice as an egalitarian and fair system. One can equally imagine such a strategy being condemned by leaders of the American Bar Association, conservative journalists, and other defenders of traditional remoteness of authority.

The kind of public education programs that legal culture would approve of—such as tasteful PBS specials or public service announcements on radio and television would seem unlikely to reach much of the public, let alone those citizens most distrustful of the system.

Portraying Values in the Media

The media often portray criminal justice through a morality play that explores themes of what Elijah Anderson, Charles and William L. Day Professor, Sociology Department, University of Pennsylvania, calls "street" and "decent" values. Based on years of field research in high-crime areas of Philadelphia, Anderson has observed people who exhibit "decent" values as patient, hopeful, respectful of authority, and with a belief in the predictability of punishment. Those who exhibit "street" values take on a bitter, impatient, antisystem outlook that is disrespectful of authority and demanding of deference.23

Television dramas that portray a hero's impatience with red tape may glorify the "street" enforcement of vengeance and personal respect. TV interviewers who ask officials provocative and insulting questions may reflect an effort to produce a "street" response.

The paradox of such media portrayals is that the more frequently legal officials are portrayed breaking the official rules out of distrust for "decent" government, the less reason the public has to believe the criminal justice system will treat citizens decently. By showing criminal justice agents pursuing street values, the media may create a self-fulfilling prophecy, defining conduct for legal officials and the public alike.

The research on respect for authority suggests that street sanctioning styles interact with different kinds of citizen personalities in ways that produce the following differences in repeat offending:

- Decent sanctioning of "decent" people produces the lowest repeat offending.
- Street sanctioning of "decent" people produces higher repeat offending.
- Decent sanctioning of "street" people may produce even higher repeat offending.
- Street sanctioning of "street" people produces the highest levels of repeat offending.²⁴

The research on respect for authority consistently suggests that when people in positions of authority impose "street" attitudes or sanctions, the reaction is almost always negative. It is more productive for criminal justice officials to show more respect to, and take more time to listen to, citizens. To the extent that this message is portrayed in entertainment media and identified with celebrity authority, the criminal justice system might be able to increase its public trust and confidence. Yet to the extent that "decent" values are themselves communicated in an illegitimate way, it will be difficult to foster a more "decent" legal culture.

Half a century ago and half a world away, a French journalist observed during a 2-month tour of China in the early 1950's that police had become far more polite under Mao's early communism:

> In the olden days the Peking police were renowned for their brutality, and pedestrians frequently suffered at their hands, smacks in the face being the least form of violence offered them.

Today they are formally forbidden to use any kind of force. Their instructions are to explain, to make people understand, to convince them.²⁵

It may be easier to change official conduct in a dictatorship than in a democracy, but the power of electronic media may make the dynamics totally different today. Electronic communications comprise a highly democratized, freemarket institution that cannot be manipulated easily for official purposes. But the media can be a venue in which celebrity power is built and put to use in fostering support for "decent" styles of criminal justice, both in the image and the reality of how criminal justice works.

The Domains of Public Trust

Three major domains appear to affect public trust and confidence in criminal justice:

- The conduct and practices of the criminal justice system.
- The changing values and expectations of the culture the system serves.
- The images of the system presented in electronic media.

Changes in each domain affect the others. Trust, as the product of all three combined, is likely to increase only when changes in all three domains can be aligned to create practices and values that are perceived to be fair, inclusive, and trustworthy.

Discovering how that can be made to happen is a daunting task. But the data suggest that fairness builds trust in criminal justice, and trust builds compliance with law. Thus what is fairer is more effective, and to be effective it is necessary to be fair.

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