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# **Trust and Confidence in Criminal Justice**

Lawrence W. Sherman  
Director, Fels Center of Government  
University of Pennsylvania  
Philadelphia, PA

July 2001

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Four decades ago, national television showed the Birmingham, Alabama, police force use police dogs, cattle prods, and fire hoses against black and white civil rights marchers. Three decades ago, New York State prison officials killed some 40 inmates during a riot at Attica Prison, and Arkansas prison officials were discovered to have been secretly murdering inmates. Also at that time, big city police forces killed seven black citizens for every one white citizen killed by police, and the U.S. Supreme Court implied that courts administered capital punishment in a discriminatory manner. The rate of serious crimes skyrocketed between the early 1960s and the early 1980s, then continued to rise among young men in poor urban areas until the early 1990s.

Today, the Nation's criminal justice system is far less partial, lethal, and racially unfair. It is arguably more effective at preventing crime and is certainly more diverse; women, African-Americans, Hispanics, Asians, and other minorities fill the ranks of what in 1960 was an all-white, male preserve. The Federal Bureau of Investigation has shifted from a policy of refusing to investigate complaints against local police to actively mounting undercover investigations of judges, prosecutors, and law enforcement agencies and officers. Ivy League university presidents no longer declare it impossible for a black person to get a fair trial. However, these improvements have had little impact on Americans' attitudes toward the criminal justice system.

Understanding this paradox of progress—better results but poorer opinions of the work involved in obtaining them—is central to improving public trust and confidence in the criminal justice system. The paradox provides the basic answer to the U.S. Department of Justice's (DOJ's) mandate for this paper: two broadly framed questions, each with subsidiary questions:

**What does the public expect from the criminal justice system?** Are these expectations reasonable? How does the public perceive various components of the criminal justice system? Is the system considered fair? Is the system seen as effective? How does the public judge criminal justice agencies? Where do citizens get their information? How much of public opinion is rooted in personal experience?

**What factors currently affect public confidence?** What has been learned about the way public confidence in the criminal justice system is built?

Determining whether the system is fair and effective begins with the question, "Compared with what?" Compared with historical benchmarks, the criminal justice system is probably more fair and effective than ever. Compared with public expectations, however, the system falls far short in both areas.

Whether public expectations are reasonable is also a matter of comparison. In a hierarchical world that treats all people of lower socioeconomic class as inferior, expecting criminal justice officials to serve every citizen equally and effectively is unreasonable. But in a radically egalitarian world—with perhaps more equality than ever before—high expectations of the criminal justice system seem as reasonable as the expectation of prompt service at a restaurant.

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Therefore, the factors affecting public confidence in the criminal justice system have as much or more to do with changes in society and culture than they do with the conduct of criminal justice officials. If compared with communications technology, the system's performance improvements during the past 40 years have equaled the technological leap from telegraph to telephone; the public, however, is demanding Internet capacity, which is leaving the criminal justice community struggling to meet rising expectations.

## **America the Multiple**

The enormous diversity of both communities and problems faced by the Nation's State-level court and prison systems, police agencies, county prosecutors, and jail systems complicates discussions of *the* system or *the* public. Averages do not reflect the extremes from which they are derived. An average of 80 may be the product of 70 and 90, or it may be the product of 40 and 120.

On issues of trust and confidence in the criminal justice system, there is evidence of at least two nations: one that is comfortable with the status quo and one that is not. These nations are unequal in both size and wealth. The majority of Americans, for example, have more trust and confidence in the police than they have in almost any other institution. However, opinions of the police have long been lower in areas where crime is most heavily concentrated.<sup>1</sup> More than 50 percent of homicides occur in areas where less than 5 percent of the population lives,<sup>2</sup> for example. In those areas, as few as one in four adults has a job<sup>3</sup> and the arrest and incarceration rates exceed the national average, which leads residents to experience crime and social justice much differently than their suburban counterparts. Such differences sharply influence public trust and confidence in the criminal justice system.

Therefore, this paper answers on a national level the questions posed to the extent the data allow. The paper also considers qualifications and differences in answers within the Nation. Such an approach makes possible four key assertions:

1. The U.S. criminal justice system is more fair and effective than ever.
2. Public trust and confidence in the criminal justice system is low, and change is demanded.
3. Increasing egalitarianism has raised expectations and reduced trust in the criminal justice system, even as the system's performance has improved.
4. The criminal justice system has failed to use the media-based "celebrity culture" to establish its authority in a society that rejects a remote hierarchy in favor of familiar personal leadership.

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## The System Is More Fair and Effective Than Ever

Although many Americans feel nostalgia for a golden era of small towns and strong communities, history paints a less idyllic picture of the evolving criminal justice system. Throughout most of American history, criminal justice has systematically favored the wealthy over the poor, whites over blacks, men over women, and adults over children. These inequities reduced the effectiveness of the system in ensuring domestic tranquility and accomplishing the basic purposes of government. To the extent these inequities still exist, they are far less pervasive than they once were.<sup>4,5</sup>

### Equity and effectiveness

**Wealth.** At the time of the Constitutional Convention in 1787, criminal justice was a private service available only to those who could pay for it; like medicine and education, criminal justice was rarely free. Prohibitively high fees for arrest warrants and other actions against offenders often meant many offenders remained free. Not until after the Constitution was ratified was it proposed that the government should use tax revenue to fund the police.<sup>6</sup>

The modern police organization that in theory provides free, nonrestrictive, 24-hour patrol protection for all citizens was introduced in New York City in 1845. Other cities quickly followed suit, often in highly politicized ways. Some cities, for instance, elected precinct captains. Most cities made appointments to the police force subject to political approval, which led to struggles among ethnic groups for control of the police. The police in both urban and rural areas tended to side with the wealthy and acted in ways that furthered the goals of big business. Rural police were also influenced by the wealthy in such industries as mining, sharecropping, and cattle ranching.

The wealth of criminals also strongly influenced the early criminal justice system. The exposés of Lincoln Steffens and other early 20th century muckrakers revealed many cases of police, prosecutors, judges, and prison wardens systematically corrupted by bribes from criminals, by politicians who had been bribed by criminals, or by both. Criminals who had no wealth routinely suffered beatings and torture in police attempts to elicit confessions. Confessions obtained by force were not barred by the U.S. Supreme Court until the 1940s. There is little wonder that an investigator on President Herbert Hoover's National Commission on Law Observance and Enforcement (the Wickersham Commission) wrote a report called "Our Lawless Police."

**Race, gender, and age.** There is strong evidence that the system discriminated against African-Americans, recent immigrant groups (especially Roman Catholics and Jews), women, and children. African-American slaves had no legal rights and could, in most States, be killed by their owners without legal consequence; not much changed in the South during the first century after Emancipation.<sup>7</sup> Women had fewer rights under the law than men.<sup>8</sup> Children were especially susceptible to assault by adults, as incest and child abuse were rarely discussed or prosecuted.

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## Sea change: 1960–2000

Beginning in the early 1960s, changes in American culture began reversing the unfair practices that had protected many wealthy and powerful criminals. The G.I. Bill of Rights increased the overall level of education and raised awareness and expectations of government conduct. The demand for equity was further fueled by the murders of white and black civil rights workers in the South, television's dramatic portrayal of the civil rights movement, and a new generation of "racket busters," people who sought to make careers modeled on Thomas Dewey's, exposing corruption in government and convicting powerful criminals. The U.S. Supreme Court, under the leadership of Chief Justice Earl Warren, took steps to protect the rights of defendants. New voting rights legislation and Federal protection of black voters began changing the power structure of cities in all regions. Popular culture weighed in, as well, with novels such as *To Kill a Mockingbird* raising awareness of social justice issues.

At the same time, the Baby Boom generation entered adolescence and fed a crime wave that caused a crisis in criminal justice. Rising rates of serious crime and a number of riots in black inner-city communities arguably caused by police brutality led President Lyndon B. Johnson to appoint a series of blue-ribbon commissions to examine criminal justice issues. The commissions' recommendations led to the creation of the Law Enforcement Assistance Administration, massive funding for higher education for police, and the development of "community policing," an egalitarian model that differed significantly from the hierarchical and detached practice of "professional policing" developed in the 1920s. Such changes ushered in ongoing reform during the 1970s, influenced by a new generation of college-educated police chiefs, the formation of new reform groups such as the Police Foundation and the Police Executive Research Forum, and research into the effectiveness of criminal justice practices. These reforms contributed to the following developments:

- The creation of internal affairs bureaus in most major police agencies to investigate complaints against police, which previously had been ignored.
- The appointment or election of many more minorities and women to the bench, prosecutors' offices, and police agencies, especially in top jobs such as police chief and district attorney.
- A substantial decline in systematic corruption and brutality.
- A gradual ban on killing unarmed fleeing felony suspects, later adopted by the U.S. Supreme Court.<sup>9</sup>
- A substantial reduction in killings of citizens by police.<sup>10</sup>
- A reduction of racial disparity in police killings in cities with populations of more than 250,000.<sup>11</sup>
- Much more attention by the criminal justice system to violence against women and child abuse.

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- Creation of court-based victim and witness advocates to provide personal support to those affected by crime.
  - Widespread adoption of 911 systems to make police more responsive to citizen needs.
  - Greater sensitivity to language and greater respect shown to citizens of all races and classes.
  - Ongoing attention to patterns of discrimination in the criminal justice system.

**Greater effectiveness.** Although the social conservatism of the 1980s slowed the pace of change, ideas and research programs begun in the 1960s continued to propel criminal justice toward greater effectiveness. Federally funded researchers discovered concentrations of crime among repeat offenders, which led to better investigations and prosecutions of high-risk suspects, as well as better designed computer systems for identifying them. Improved computers also enabled law enforcement agencies to better focus scarce resources and helped Federal researcher discover “hot spots”—the 3 percent of addresses where more than half of all crime occurs. These developments led to more “problem oriented” community policing in the 1990s, a strategy that focused on public safety as much as consultation with citizens. New York City’s application of problem-oriented policing principles led to the creation of a new management system called COMPSTAT— for computerized statistics—which some observers credit with at least part of the city’s massive reduction in crime between 1994 and 2000, as crime statistics were used to hold police managers accountable. Increased computer-driven efforts to confiscate illegal firearms also may have sparked the substantial increase in weapons arrests in 1993 that has consistently paralleled the national drop of homicide rates back to their 1960s levels.<sup>12</sup>

As the 20th century closed, American criminal justice was more focused on fairness and effectiveness than ever. Specialized courts, such as drug courts and gun courts, were established to solve difficult problems. DOJ suits against police agencies filed under legislation passed in 1994 placed the police under stricter scrutiny than ever, although court supervision of prisons was reduced by 1996 legislation. Surveillance cameras in patrol cars, lockups, and in the hands of citizens (as in the Rodney King case) have greatly increased the visibility of police encounters with citizens, likely resulting in less police misconduct. Prosecutors increasingly embrace “community prosecution,” decentralizing their offices to improve priority setting and citizen cooperation. Police agencies nationwide, motivated by New York City’s success in reducing crime, pay more attention to identifying crime patterns and focusing patrol resources for crime prevention.

The criminal justice system remains far from perfect. Evidence of racial discrimination, violations of citizen rights, waste, and inefficiency is abundant. Racial profiling, sentencing disparities, pockets of corruption, and unjustified killings remain major concerns. But compared with the practices of the 1960s, criminal justice has substantially improved. Moreover, my meetings with top criminal justice officials in 10 other nations since 1997 suggest that the U.S. criminal justice system is doing more about fairness and effectiveness than criminal justice systems in other countries. The paradox is that none of this evidence matters much to the American people, who appear to want far greater change.



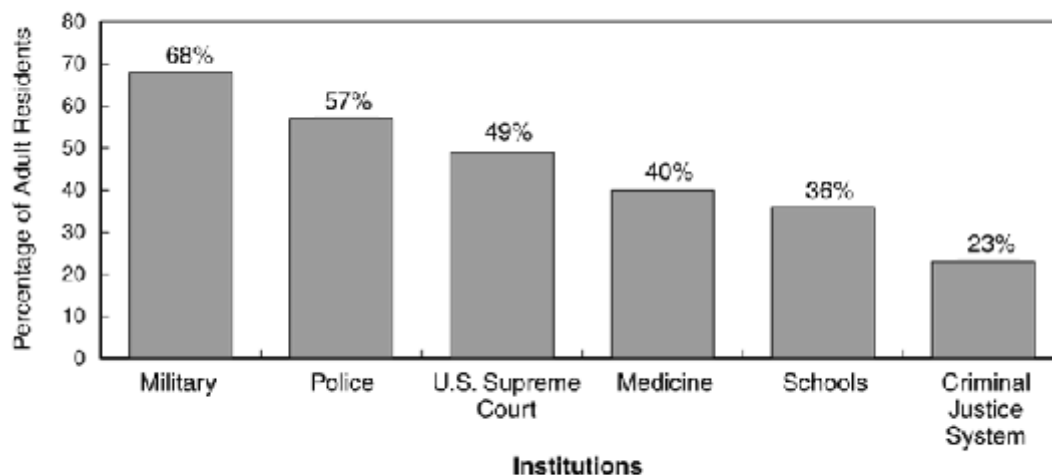
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## Public Trust and Confidence Is Low

What is known about public trust and confidence in the criminal justice system is both limited and sobering, and no clear definition of terms guides a consistent approach to measurement. No data about “trust” or “confidence” in criminal justice were gathered in recurrent national polls before the 1990s, although similar data existed for selected institutions (see below). The clearest, most recent data available compare public confidence in criminal justice institutions—without defining the term—with confidence in non-criminal justice institutions. Those data give criminal justice overall very poor marks.

A 1999 Gallup poll found that public ratings of confidence in criminal justice rank far below ratings of confidence in other institutions, such as banks, the medical system, public schools, television news, newspapers, big business, and organized labor.<sup>13</sup> The criminal justice system was third lowest in level of public confidence among the 17 institutions examined, with only Internet news and health maintenance organizations ranking lower. Exhibit 1 shows how the criminal justice system fared according to the percentage of respondents who said they had “a great deal” or “quite a lot” of confidence in the selected institutions. The 23-percent confidence level for criminal justice is actually a 50-percent increase from the 15-percent confidence level in 1994 and is almost identical to the ranking of the U.S. Congress. However, the low ranking of the criminal justice system relative to other institutions has remained unchanged.

**Exhibit 1. Public Confidence Ratings for Selected Institutions**



Source: The Gallup Organization, “Confidence in Institutions,” retrieved from the World Wide Web site <http://www.gallup.com/poll/indicators/indconfidence.asp>, October 10, 2000.

The most striking finding in exhibit 1 is the difference between the public’s low evaluation of the criminal justice system and the high evaluation received by the police, which is by far the largest component of the criminal justice system. Although other data<sup>14</sup> also show that confidence in local courts and in prisons is far lower than confidence in the police, the large differences suggest that Americans may not

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think of the police as part of the criminal justice system.

### **What is “confidence?”**

It is also apparent that the meaning of “confidence” can vary with how polling questions are asked. In June 1999, respondents gave police a 57-percent general confidence rating, but in an October 1998 poll<sup>15</sup> they gave police only a 45-percent rating of a “great deal” or “quite a lot” of confidence “in the ability of the police to protect you from violent crime.” With respect to the definition of confidence, the poll data are vague and may include at least three possible options:

- Trust and confidence in the integrity and fairness of the institution.
- Confidence that the institution is doing the right thing, such as being “tough enough.”
- Confidence that institutional action will result in public safety.

On the issue of being “tough enough,” poll data from the 1960s and 1970s show striking transitions. From 1965 to 1969, for example, one consistent poll found an increase from 48 percent to 75 percent in respondents who said that courts were not harsh enough with criminals.<sup>16</sup> The perception that courts are too lenient has since remained near that level.<sup>17</sup> How toughness is related to confidence or the social science concept of legitimacy<sup>18</sup> is not clear. In 1972, 83 percent of all respondents to a national poll, including 72 percent of nonwhite respondents, said the police should be “tougher with crime and lawlessness.”<sup>19</sup> Yet a similar poll in 1970 found that 64 percent of respondents said the police were doing an “excellent” or “pretty good” job.

Overall, the public’s confidence in the police seems to have little to do with crime rates or perceptions of police conduct. Confidence “in the ability of the police to protect citizens from violent crime” barely changed from 1981 to 1998, despite substantial decreases in crime.<sup>20</sup> Similarly, about 45 percent of poll respondents from 1981 to 1997 have rated the honesty and ethical standards of police officers as “high” or “very high,” with barely a drop following the Rodney King incident or the O.J. Simpson murder trial.<sup>21</sup>

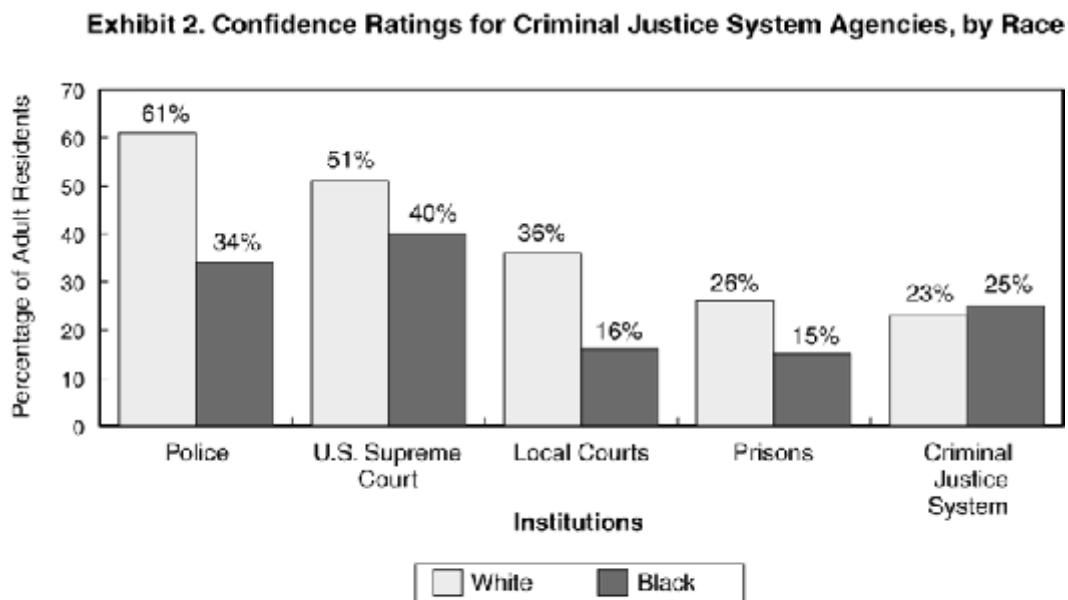
The public’s confidence in the court system has been measured less often, but it also reflects little connection with measures of the system’s performance or rates of crime. Public confidence in the U.S. Supreme Court has remained largely unchanged since 1980,<sup>22</sup> in spite of the Court’s increasing support during that period for police powers. From 1987 to 1997, national samples of graduating high school seniors revealed up to 33-percent decreases in those who believed that the police, local courts, and the U.S. Supreme Court were doing a “good” or “very good” job, even though crime rates dropped substantially.<sup>23</sup>

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## The racial divide

There are clear racial divisions of opinion about the criminal justice system's component institutions, though not about the system as a whole. There is a vast amount of literature documenting these racial and other demographic differences.<sup>24</sup> Yet a 1998 Gallup poll<sup>25</sup> reported very little demographic difference among the 23 percent of respondents who said they had a "great deal" or "quite a lot" of confidence in the criminal justice system. Blacks actually have a slightly *higher* level of confidence in the system than do whites (25 percent versus 23 percent). Men have more confidence than women (28 percent versus 20 percent), rural residents have more confidence than urban residents (28 percent versus 18 percent), and people less than 30 years old have slightly more confidence than people older than 65 (26 percent versus 22 percent). These differences are quite small, however, and they do not change the very low rating of the criminal justice system as a whole.

Far greater differences of opinion emerge when people are asked about specific criminal justice agencies. The same Gallup poll<sup>26</sup> reports that whites have almost twice as much confidence in police (61 percent) as do blacks (34 percent). (See exhibit 2.) Race also represents the biggest division of opinion among all demographic subgroups reported. Next to race are age (46 percent of respondents under age 30 are confident versus 68 percent of respondents over 65) and geography (50 percent of urban residents versus 63 percent of rural residents). When asked about confidence in the U.S. Supreme Court,<sup>27</sup> the racial difference is smaller, but still a factor. Blacks have less confidence (40 percent) than whites (51 percent), with race again the greatest demographic division.



Sources: Maguire, K., and A. Pastore, eds., *Sourcebook of Criminal Justice Statistics, 1997*, Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1998, NCJ 171147; The Gallup Organization, "Confidence in Institutions," retrieved from the World Wide Web site <http://www.gallup.com/poll/indicators/indconfidence.asp>, October 10, 2000.

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A poll conducted in 1996 that asked the same type of questions as the Gallup poll about courts and corrections, showed similar response patterns by race. Whites have twice as much confidence in their local court systems (36 percent said they had a “great deal” or “quite a lot”) than blacks (16 percent) and nearly twice as much confidence in their State prison systems (26 percent) as do blacks (15 percent). In measures of confidence in both courts and prisons, race is again the demographic factor that shows the largest difference of opinion.<sup>28</sup>

**Race, victimization, and punishment.** Racial differences in opinion about the criminal justice system may be closely linked to two major correlates of race in that arena: victimization and punishment. Blacks are approximately 31 percent more likely to be the victim of a personal crime than whites and twice as likely as whites to suffer a completed violent crime.<sup>29</sup> Young black males historically have been 10 times more likely to be murdered than white males.<sup>30</sup> At the same time, arrest rates, which are not reported by race in the annual FBI report, are five times higher for robbery, four times higher for murder and rape, and three times higher for drug violations and weapons possession for blacks than for whites.<sup>31</sup> Blacks are eight times more likely to serve time in State or Federal prison than non-Hispanic whites (and three times more likely than Hispanic whites); approximately 2 percent of the black population—1 in 63 blacks—was in prison in 1996.<sup>32</sup>

**Race and neighborhood.** What the above data fail to show, however, is the extent to which racial differences in victimization and punishment—and, therefore, in attitude—are largely the result of a small number of poor, urban, high-crime areas. What is understood as America’s racial divide may largely consist of conditions in neighborhoods that both blacks and whites perceive as applying to society overall. Harvard University sociologist Orlando Patterson has estimated that only 1 in 30 black adults resides in such high-crime, high-poverty areas, although the proportion is higher for children. Even if the proportion is 1 in 3, the result is the same: A minority of blacks suffers from extraordinarily high rates of crime, from which the criminal justice system is unable to protect them by assuring an average risk of victimization equal to those of people who live in other neighborhoods. This disparity continues despite equal disparities in rates of punishment that are also concentrated in these neighborhoods.

Whether the disparity in crime, punishment, or both drives the lower levels of confidence among blacks is difficult to determine at the national level. Despite the well-known concentration of crime and perceptions of injustice in these neighborhoods, no national or Federal system of data collection provides indicators specific to those areas. The information available comes from city-by-city analyses, such as the Project on Human Development in Chicago Neighborhoods.<sup>33</sup> What such studies demonstrate, however, is extremely important for the national conversation about race, crime, and trust in the justice system. Two findings are as follows:

- **There is no race-based subculture of violence.** Given similar neighborhood conditions, blacks and whites share similar views of the legitimacy of law. To the extent there is a correlation between race and attitudes toward law, it simply reflects the greater likelihood that blacks live in high-poverty areas. Anyone living in those areas, regardless of race, is more likely than residents of low-crime areas to view the law as nonbinding. Such attitudes may help sustain high rates of

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offending, thus provoking higher levels of legal intervention and creating more opportunities for conflict between criminal justice agencies—especially the police—and community residents.

- **There is no race-based hostility toward the police in high-crime areas.** Whites living in high-crime areas are as hostile toward the police as are blacks<sup>34</sup>, a fact that challenges the notion that police racism explains such hostility—unless it is the racism of black police officers toward white residents. It seems more likely that the public’s distrust of the police in high-crime areas is driven more by crime than by police practices. If distrust is, in fact, a product of police practices, it may be the result of the failure of such practices to prevent crime, rather than excessive police presence. Distrust may also be linked to the style of policing in high-crime areas, which affords less recognition and dignity to police clients—people who have face-to-face contact with the police—than in lower crime areas. However, police practices are influenced by crime rates—meaning that attributing public distrust of the police to police tactics is still fundamentally about the experience of crime.

## Strong Demands for Change

Dissatisfaction with nonpolice agencies in the criminal justice system extends far beyond inner-city poverty areas. According to a 1998 random-digit-dialing telephone survey of 4,000 residents in 10 northeastern States,<sup>35</sup> only 12 percent of respondents thought the criminal justice system “works well enough now” in dealing with violent crime; 16 percent agreed with that statement as it pertained to all kinds of crime. More than 80 percent of respondents preferred the idea of “totally revamping the way the system works” for violent crime, with 75 percent saying the same for all crime. These findings varied little from State to State or by demographic group.

The level of dissatisfaction is extraordinarily high. It may reflect a sampling bias of telephone surveys; that is, respondents are more likely to cooperate with the interview if they have strong opinions on the subject. Nonetheless, the telephone survey provides clues about the causes of public dissatisfaction with criminal justice agencies. For example, the respondents believe 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 their crime(s).
- Offenders should acknowledge their responsibility for the crime(s).

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- Victims should have a chance to meet with offenders to find out why crimes occurred and to learn whether offenders have accepted responsibility for them.
  - Ordinary citizens, not courts, should set penalties for nonviolent crimes.
  - Drug treatment should be used more widely for drug-involved offenders.

These results sharply contrast with discussion at the National Conference on Public Trust and Confidence in the Criminal Justice System, held in Washington, D.C., in 1999. The 500 attendees included State chief justices, court managers, and representatives of the Federal judiciary, bar, and news media. The draft National Action Plan that emerged from this conference focused on such strategies as improved education and training of judges, improved media understanding of the courts, increased judicial involvement in public education on the role of the courts, and better use of information technology.<sup>36</sup> Yet the strategies seemed unresponsive to concerns about the treatment of victims and offenders voiced in the northeastern States survey. The organizations participating in this plan include the American Bar Association, DOJ, the Conference of Chief Justices, and the League of Women Voters.

The personal concerns of survey respondents are consistent with a major theory about declining public confidence in all of government—not just the criminal justice system—in all modern nations. A similar loss of trust has been found in 18 other nations. These concerns arise from the growth of equality in all walks of life and increasing emphasis on respect for individuals. To the extent the survey shows the public demand for greater respect of citizens by courts, it reflects a more general complaint about government in liberal democracies.

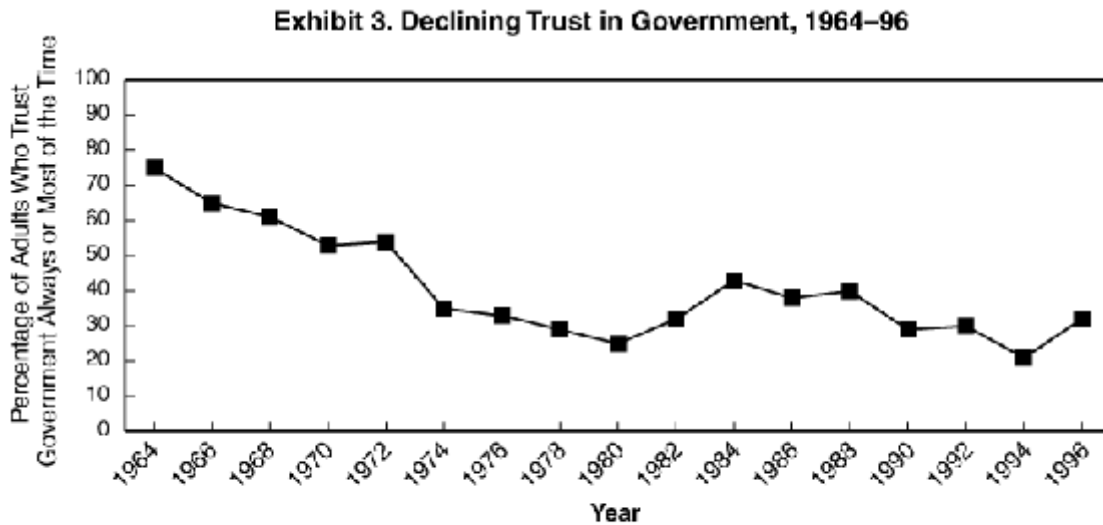
## **Increasing Egalitarianism Has Raised Expectations**

The sharp decline in America's trust in government since 1975 has been accompanied by citizens' higher expectations of recognition, respect, and the feeling of status. Citizens' frequent contact with the criminal justice system in particular—about 1 in 5 individuals each year have at least one contact—makes the system a flashpoint where the hierarchical design of criminal justice institutions conflicts with the egalitarian demands of the public. Isolated experiments with more egalitarian forms of justice have yielded substantial improvements in the public's level of trust in and belief in the legitimacy of the criminal justice system, including increased compliance with the law.

### **Two political ethics**

To a large extent, the public's declining trust in government confirms Baltzell's<sup>37</sup> thesis that the United States is moving away from the Puritan political ethic of communal respect for government and toward the Quaker political ethic of individual skepticism about government and bureaucratic institutions. Baltzell identified the cultural turning point toward distrust of government as 1964, when confidence in

the Federal Government began a freefall that was interrupted only by the early years of the Reagan administration. Although public trust in government has rebounded in recent years (with confidence ratings rising to more than 25 percent in 1996), it has shown no sign of returning to the level of the early 1960s, when three of four respondents said they felt confidence in the government (exhibit 3).



Source: Adapted from Orren, G. "Fall From Grace: The Public's Loss of Faith in Government," in *Why People Don't Trust Government*, eds. J.S. Nye, Jr., P.D. Zelikow, and D.C. King, Cambridge, MA: Harvard University Press, 1977: 81, citing American National Election Studies, 1958–1996, University of Michigan.

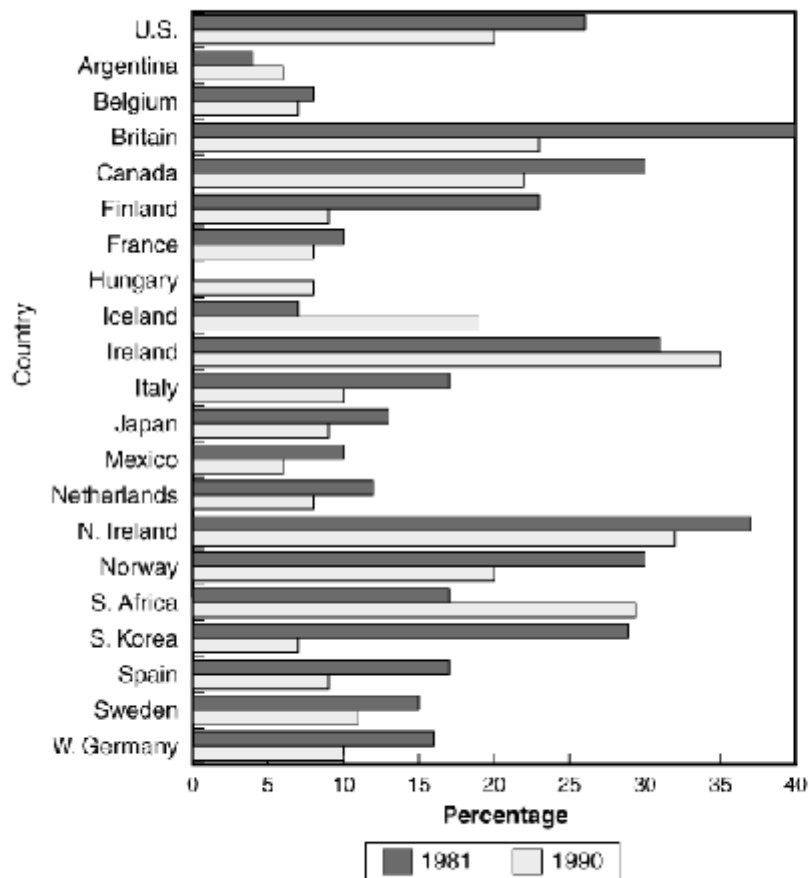
A recent Harvard University Kennedy School of Government analysis of the trend in declining trust has ruled out a wide range of explanations, including the state of the economy and the quality of governmental performance.<sup>38</sup> The analysis concludes that the most likely explanation is the increasing demand for equality in political and social culture, one presaged by Count Alexis de Tocqueville after his visit to the United States in the 1830s:

Equality, which makes men independent of one another, naturally gives them the habit and taste to follow nobody's will but their own in their private affairs. This complete independence, which they constantly enjoy among their equals . . . makes them suspicious of all authority.<sup>39</sup>

Inglehart<sup>40</sup> shows that an antiauthority shift in political culture has spread far beyond U.S. borders, to 17 of the 20 other countries surveyed in 1981 and 1990. These surveys show declining respect for authority in general and for hierarchical institutions in particular. Exhibit 4 shows data for the police, the only criminal justice institution on which Inglehart reports. In a survey of Australian citizens, Bean<sup>41</sup> reports patterns of declining trust in government similar to those in the United States (a 25-percent decline from 1985 to 1995), including far higher confidence in the police (65 percent) than in the court system (46 percent).

Indeed, the consistently greater support for police than for courts may result from a perception of the police as independent individualists (the new egalitarian cultural ideal, according to Baltzell); judges are seen as rulebound conformists (the outdated hierarchical ideal). The decline of public trust in liberal democratic governments also suggests a deeper paradox of success: As citizens in democracies

**Exhibit 4. Percentage Expressing "A Great Deal" of Confidence in Their Country's Police Forces, in Various Countries, 1981 and 1990**



Sources: Adapted from Inglehart, R., "Postmaterialist Values and the Erosion of Institutional Authority," in *Why People Don't Trust Government*, eds. J.S. Nye, Jr., P.D. Zelickow, and D.C. King, Cambridge, MA: Harvard University Press, 1997, citing 1981 and 1990 World Values surveys (1981 data not available for Hungary).

become materially successful and better educated, their perceived need for governance declines and their expectations of government conduct increase.<sup>42</sup> The crisis of government legitimacy has thus been prompted less by declining quality in government conduct than by increasing public dissatisfaction with institutions in general, driven by what Inglehart<sup>43</sup> calls "post-materialist values."

In the Kennedy School analysis, Nye and Zelickow<sup>44</sup> examined 17 hypotheses about public loss of trust in government, including theories of government integrity and effectiveness. Only one fits all institutions and all countries: the social changes normatively challenging the legitimacy of all social hierarchies of authority (excluding wealth)—of husbands over wives, doctors over patients, schoolteachers over



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students and parents, parents over children, and government officials over citizens. Thus, at a time when advanced societies have become increasingly *less* egalitarian in their distributions of material wealth,<sup>45</sup> the postmaterialist lack of struggle for daily survival may have made them *more* egalitarian in their cultural expectations of government and the rule of law. As Baltzell observes, “from the beginning, the Quakers were levelers of authority rather than levelers of wealth.”<sup>46</sup>

This suggests that what Sampson and other scholars call “legal cynicism”<sup>47</sup>—the perception that laws are not binding—is not the product of a criminal subculture, but rather a 400-year-old Christian political theology that has become globally influential in modern, egalitarian cultures. With such a world view, people are less likely to obey the law out of a sense of communal obligation and more likely to obey laws supported by personal morality. Just as the U.S. held German officials criminally liable for obeying their country’s government and just as Mohandas Ghandi and Martin Luther King, Jr., used civil disobedience to challenge immoral laws, the modern democratic culture supports citizens breaking laws that conflict with their personal moralities.

### **Trust and recognition**

The trend toward the Quaker ethic does not mean that public support for most laws, or a system of laws, is eroding. Survey evidence shows that most people still support laws against serious crimes, despite divisions over issues such as drug use and abortion. What the changing culture creates is a world in which people trust laws but not necessarily legal institutions. Trust in the criminal justice system is no longer automatic but rather earned every day during each encounter between legal agents and citizens.

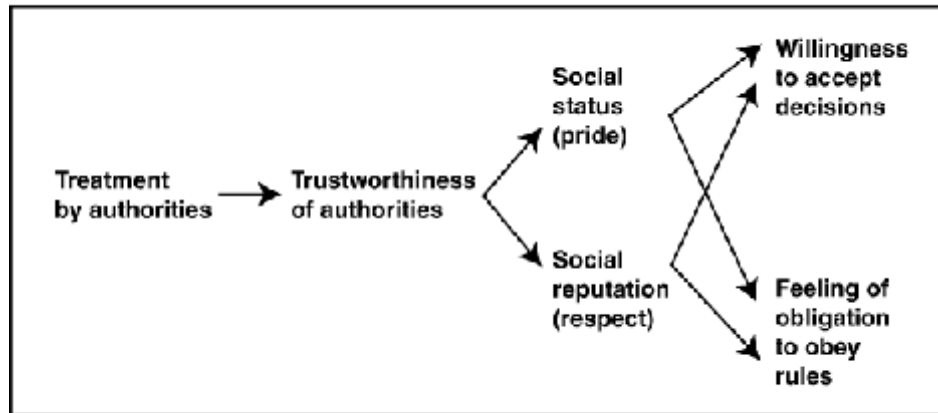
**Tyler’s trust.** Tyler’s research shows that Americans—especially minorities—are extremely sensitive to the respect they receive and the procedures used when they interact with the criminal justice system.<sup>48</sup> In survey research in Chicago, Tyler found that people who said they had been treated unfairly or disrespectfully were less likely to judge legal institutions as legitimate or as justly exercising authority. This judgment rested more on the *procedural justice* aspects of the encounters than on the *substantive justice* aspects. Fair procedures, with equal opportunity for all parties to discuss factual issues with legal officials, seem to influence public trust more than rigidly consistent sentencing practices. Tyler’s evidence suggests that when building citizen trust in the legal system, it matters less whether an individual receives a speeding ticket than whether the police officer addresses the individual politely during the traffic stop. By extension, it may be less important that sentencing guidelines impose harsher punishments for the possession of crack cocaine than for the possession of powder cocaine than it is that the police officers engaged in drug enforcement activities treat suspects and arrestees more like equals and less like enemies.

Tyler concludes that treatment by legal officials (procedural justice) affects citizens’ level of trust in government, which in turn affects both the level of pride in the government and the degree to which individuals feel respected by society, including the government.<sup>49</sup> Tyler’s model of social trust relates the emotions of pride and self-respect to both citizens’ willingness to accept the decisions of the legal

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system and their sense of obligation to obey the rules. Exhibit 5 displays the causal relationships Tyler observes.

**Exhibit 5. Conceptual Model of Social Trust**



Source: Tyler, T., "Trust and Democratic Governance," in *Trust and Governance*, eds. V. Braithwaite and M. Levi, New York: Russell Sage Foundation, 1993.

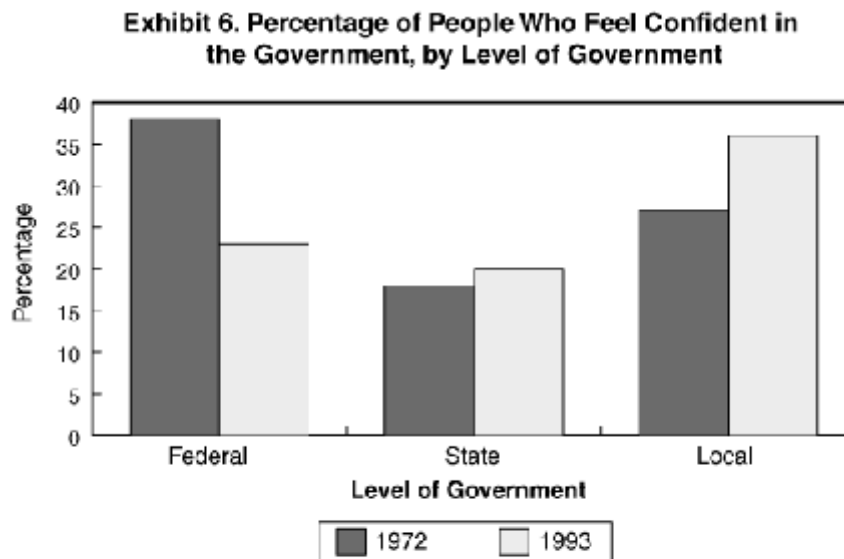
Tyler concludes that the odds of each citizen deciding a law is morally correct are much higher when citizens believe the law gives them adequate recognition and respect. However, rather than fostering citizens' willingness to defer to a law, Tyler suggests that respectful treatment creates a stronger consensus about what is moral and what the law ought to be. The consensus model, which assumes more equality than the deference model, appears to be a much better fit with the new egalitarian political culture than the deference model on which existing legal institutions were designed. Standing when judges enter a room and obeying police orders, for example, are procedural forms that imply officials are more important than citizens. Such forms may do more to undermine legal trust than to build respect for the law.

**Fukuyama's recognition.** Tyler's research is consistent with Francis Fukuyama's RAND Corporation analysis of the growing role of the state in recognizing individuals. Fukuyama hypothesizes that the quest for personal and group recognition has been a driving force in history, which he defines as the evolution of ideology and government.<sup>50</sup> The "end of history," Fukuyama hypothesizes, is liberal democracy, which he calls the final form of ideological evolution. Liberal democratic nation-states do not go to war (at least—thus far—not with other modern democracies). However, these democracies face strong internal demands from their citizens, whose human rights include the dignity of recognition, or what Plato called *thymos*. The ability or failure to meet this demand is a source of the anger, pride, and shame that influence the public's trust and confidence in government:

*Thymos* emerges in the *Republic* as being somehow related to the value one sets on oneself, what we today might call "self-esteem." . . . Socrates suggests a relationship between anger and "self-esteem" by explaining that the nobler a man is—that is, the more highly he evaluates his own worth—the more angry he will become when he has been dealt with unjustly. . . . *Thymos*

is something like an innate human sense of justice: people believe that they have a certain worth, and when other people act as though they are worth less—when they do not *recognize* their worth at its correct value—then they become angry. The intimate relationship between self-evaluation and anger can be seen in the English word synonymous with anger, “indignation.” “Dignity” refers to a person’s sense of self-worth; “in-dignation” arises when someone happens to offend that sense of worth. Conversely, when other people see that we are not living up to our own sense of self-esteem, we feel *shame*; and when we are evaluated justly (i.e., in proportion to our own true worth), we feel *pride*.<sup>51</sup>

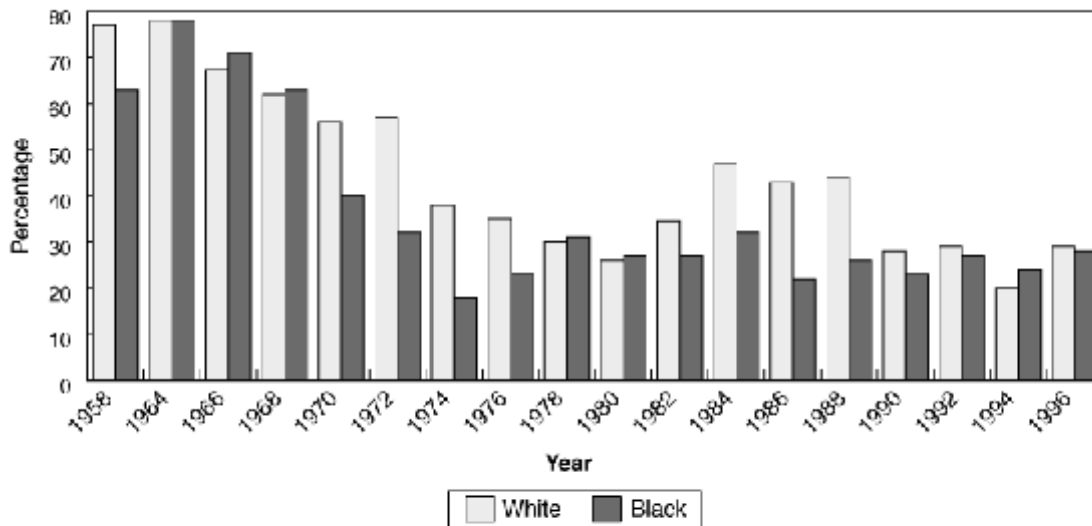
**Braithwaite’s emotions.** Shame, pride, and anger figure heavily in Braithwaite’s theory as elaborated in *Crime, Shame and Reintegration*<sup>52</sup>: Modern criminal justice has become disconnected from the major social forces that prevent crime—the fear of shame and pride in being a law-abiding citizen. Instead, Braithwaite suggests, the criminal justice system often creates indignation toward the state by offending citizens’ dignity and undermining their respect for law and their willingness to obey it. The Braithwaite and Fukuyama theses together may thus explain the data in exhibit 6, which show that public confidence in local government has actually been rising while confidence in the Federal Government has been falling.<sup>53</sup> The greater distance and impersonality of the Federal Government may give most Americans less recognition than the more personal face-to-face service received from local government, including the police (but not courts and corrections). As this type of recognition has become more important to citizens, support for a more personal level of government has increased—though not for everyone.



Source: Adapted from Orren, G. “Fall From Grace: The Public’s Loss of Faith in Government,” in *Why People Don’t Trust Government*, eds. J.S. Nye, Jr., P.D. Zelikow, and D.C. King, Cambridge, MA: Harvard University Press, 1977: 83, citing *Changing Public Attitudes on Governments and Taxes*, U.S. Advisory Commission on Intergovernmental Relations, Washington, D.C., 1993.

As exhibit 7 shows, trust in the Federal Government among blacks depends heavily on which political party is in the White House.<sup>54</sup> Relative to whites, blacks show as high or higher levels of trust in the Federal Government when the President is a Democrat but lower levels of trust when the President is a Republican. This may reflect the fact that approximately 9 in 10 blacks are Democrats, or it may reflect how blacks perceive party differences in civil rights enforcement and Presidential actions that affect the criminal justice system.

**Exhibit 7. Percentage of Americans Who Trust Their Government, 1958–96, by Race**



Note: Percentage of participants who answered, "Most of the time" or "Just about always" to the question, "How much of the time can you trust the government to do what is right?"

Sources: LaFree, G., *Losing Legitimacy: Street Crime and the Decline of Social Institutions in America*, Boulder, CO: West View Press, 1990: 102, citing Warren E. Miller, *American National Election Studies Cumulative Data File, 1952–1996*, Ann Arbor, MI: Center for Political Studies, 1996.

### Fitting legal institutions to the culture

For all Americans, the central cause of declining trust may be the incongruence of hierarchical legal institutions and their long-established procedures in an egalitarian culture. There are many ways in which citizens experience the conduct of judges, prosecutors, and police officers to be unnecessarily authoritarian. Some judges find even the physical architecture of courts to be dysfunctional, reflecting a hierarchical separation between state and citizen. Texas Congresswoman Sheila Jackson Lee, who was formerly a judge, says she disliked sitting up high and looking down on defendants and other citizens; she would have preferred to sit at a table or desk with others present—or even in a circle—to gain more support for the proceedings.<sup>55</sup>

**The Canberra experiments.** This hypothesis was the subject of recent field experiments in Canberra, Australia, in which hierarchy and equality were compared according to their effectiveness in building respect for the law.<sup>56</sup> As if anticipating the results of the 1998 northeastern States survey,<sup>57</sup> the

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Australian Police began testing victim-centered egalitarian justice procedures in the early 1990s. Since 1995, a controlled experiment funded by the Australian government, with support from the National Institute of Justice, tested the following hypothesis: An egalitarian, consensual procedure, by which stakeholder citizens decide criminal sentences, enhances the legitimacy of the law in the eyes of both offenders and victims more so than the hierarchical, deferential process of being sentenced by a judge.<sup>58</sup> To date, results support the hypothesis. The experiment compared the sentencing of youthful violent and property offenders in courts with the sentencing of youthful violent and property offenders at community justice conferences. The conferences used the police to invite victims and their supporters to meet with the offenders, who must not (for the purpose of the meeting) dispute their guilt. Attendees sit in a circle and discuss the harm the crime caused, its pain and emotional impact, and how the harm should be repaired. The meetings begin with the police officer moderating the proceedings asking questions: 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? Is there anything the victim wants to say to the offender? These questions are not scripted, but similar main points are usually covered. Apology and forgiveness are far more frequent in the conference setting than in a courtroom.<sup>59</sup> Most important, everyone attending a conference session is allowed to speak, just as in a Quaker meeting, and no one person dominates the proceedings, as in a Calvinist church or in a typical Anglo-American courtroom.

**No lawyers.** A corollary of the radical egalitarianism that supports community justice conferences is an anti-intellectual devaluing of learned professions.<sup>60</sup> Attorneys are not allowed to attend the conferences as advocates of either offenders or the State, although they are always on call for situations in which a participant's rights may seem abused. However, as long as both victim and offender agree to meet in a conference, all participants have equal authority, regardless of title or level of education. Community justice conferences represent the view that any citizen stakeholder in a crime can tailor a punishment to a crime based on common sense and civic experience.

**Open emotions.** The community justice conference also features the open expression of emotion. Unlike the emotional restraint valued by Puritan culture and courts in the West, antinomian sects value intensely emotional displays. There is neither a ban on tears nor any attempt to discourage them at a restorative community justice conference. As a result, a case takes, on average, approximately 70 minutes to resolve, compared with 10 minutes in a court. Moreover, court time is often spread across multiple appearances, most of which have no emotional significance for victim or offender and leave them feeling like cogs in a wheel. By contrast, a community justice conference focuses on the people present—rather than legal formalities—and people appear only once and arrive prepared to stay until the case is resolved.

**Trust in justice.** Within weeks after the cases in the Australian study were processed, both offenders and victims were interviewed. The sentences imposed under the two kinds of justice were fairly similar in spite of differences in the sentencing process.<sup>61</sup> However, the restorative justice conferences produced far better results in terms of Fukuyama's concern about citizen recognition and Baltzell's

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concern for respect for legal institutions. Offenders sent to conferences were far less likely than those sent to court to say they were pushed around; disadvantaged by their age, income, or education; treated as if they were untrustworthy; or not listened to. Offenders sent to conferences were more likely to say their experience increased their respect for the justice system and for the police, as well as their feeling that the crime they committed was morally wrong. Offenders sent to court were more likely to say the experience made them angry, which could be a sign of insufficient recognition by the state.

Victims, specifically, were far more satisfied with community justice conferences than with court proceedings. This may be due to a lack of victim notification about offenders' scheduled court appearances, either before or after sentencing. Almost all victims who were offered a community justice conference were notified of the event and attended. As a result, those victims were far more likely to receive an apology and restitution. Those victims also responded with increased trust in the police and the justice system and decreased fear of and anger at the offender.

**Building trust one case at a time.** The four Canberra experiments suggest that citizen trust in the criminal justice system is highly personal. As Tyler demonstrates, the personal actions of criminal justice system representatives—and their apparent motives—strongly affect the legitimacy of law and the public's willingness to obey it.<sup>62</sup> The personal legitimacy of people who work in the criminal justice system may depend, in turn, on institutional forms that encourage personal interaction and allow time for courtesy. Implicit in this courtesy is a leveling of distinctions in rank between citizen and official. As Reiss observed, citizens' opinions about the legitimacy of police authority vary widely from one situation to the next,<sup>63</sup> meaning officials must earn legitimacy one case at a time.

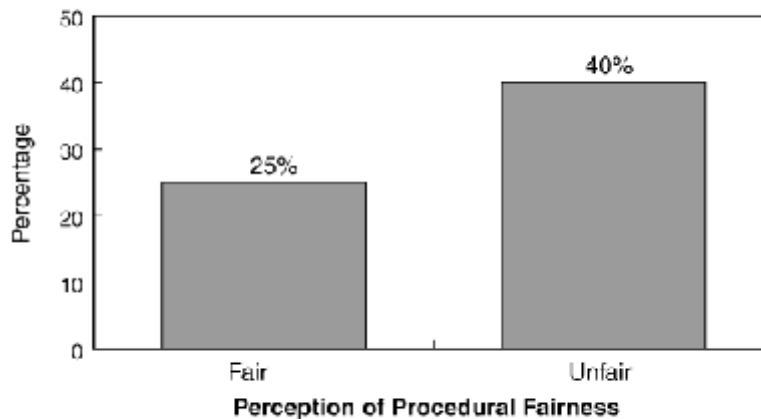
**Building trust while making arrests.** The most dramatic demonstration of this principle is a finding that *how* the police make arrests for domestic violence affects the rate of repeat offending. Paternoster and colleagues demonstrated this with offender interview data from the Milwaukee domestic violence arrest experiment.<sup>64</sup> Their analysis used a composite measure of the "procedural justice"<sup>65</sup> which the suspect perceived the police were practicing while making the arrest. Items making up "procedural justice" included listening to both the offender and the victim, not handcuffing the offender in front of the victim, and not using physical force. According to interviews with offenders conducted in jail cells, this composite measure of fairness was strongly related to the risk of repeat offending. As exhibit 8 shows, the risk was 40 percent among offenders who perceived a low level of procedural fairness, but only 25 percent for those who perceived a high level of fairness. That these risk levels accounted for prior levels of violence increases confidence that *how* the police make an arrest can affect the crime rate—by acting in ways that influence trust and confidence in the criminal justice system.

**Reducing complaints against the police.** There are two additional tests of the hypothesis that trust in criminal justice grows from egalitarian procedures, both of which focus on recent successes in reducing complaints against the police. The first test originated in New York City, where complaints against police officers dropped in a precinct that changed its building architecture to better fit the culture. The 19th-century design of New York's police station houses features a high desk in the reception room that resembles a judge's desk in a courtroom. Desk officers, who are usually supervisors at the

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sergeant or lieutenant rank, stood or sat behind the desk peering down to interact with citizens who came into the station. Citywide, citizen complaints against the police began to rise in 1993. In the 44th

**Exhibit 8. Percentage of People Who Say the Police Act Fairly in Repeat Domestic Violence Cases**



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.

Precinct in the Bronx, complaints reached a 10-year high in 1996. However, in the 2 years after Deputy Inspector Richard Romaine took command in 1997, the 44th Precinct experienced a major decline in complaints following implementation of a program to improve police relations in the area once known as "Fort Apache." Part of the program eliminated the high desk in the reception area and the bar in front of it. This less hierarchical design was part of a general strategy that a recent Vera Institute of Justice report described as demonstrating that the police were "responsive to community concerns."<sup>66</sup>

The second test of the procedural equality theory comes from Prince Georges County, Maryland, a suburban Washington, D.C., community of approximately 1 million people, of which approximately 55 percent are black. Complaints against the county's police department of 1,400 officers dropped from 1997 to 1999 after the adoption of a new procedure for traffic stops. The procedure was introduced as part of a strategy to reduce gun violence called Take Away Guns (TAG). The TAG program targeted highways along which there are high rates of gun crime. An approximately 400-percent increase in traffic stops (e.g., for speeding, broken lights, and missing license plates) gave police the opportunity to explain the program to citizens and distribute a letter from the district police captain about the program. The letter included the captain's phone number and invited citizens to call the captain with complaints or questions. Officers were trained to be polite in "selling the program" to drivers, then to ask their permission to search the trunk or other parts of the car for guns. The program received not only a high rate of compliance with the requests but also praise from drivers who approved of the effort to get guns off the street. In the first 2 years of the program, both gun violence and citizen complaints of excessive force by police dropped substantially.

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**Reduced tolerance for police violence.** Public opinion about police use of force provides additional evidence of how the new culture demands new practices. In the past three decades, demand has increased among all income groups for police restraint in the use of force to elicit deference to their authority. From 1973 to 1996, General Social Survey respondents who approved of “a policeman striking a citizen who said vulgar and obscene things to the policeman” fell steadily, from 22 percent to 7 percent.<sup>67</sup> Approval for striking citizens attempting to escape from custody also dropped, falling from 87 percent to 68 percent. At the same time, approval for an egalitarian and reciprocal form of police violence—striking a citizen who was attempting to punch a policeman—has remained at more than 90 percent.

## **Criminal Justice Has Failed to Use “Celebrity Culture” to Build Trust**

A growing body of theory and evidence suggests that it is not the fairness or effectiveness of the *results* of criminal justice that determine its level of public trust; rather, changes in modern culture have made criminal justice *procedures* and the manners of criminal justice officials far more important to public trust. This explanation is supported by research on the effect of television and other communications media on the nature of authority and trust in government. In spite of Tyler’s focus on personal contact with the criminal justice system, most citizens have little, if any, personal experience with it. For the majority of Americans, their level of trust in the criminal justice system may depend on how legal agencies are portrayed in entertainment and news media.

The future authority of the criminal justice system may well depend on how it appears not just to those directly involved in the system but in the electronic media. Legal historian Lawrence Friedman writes in *The Horizontal Society*<sup>68</sup> that modern culture has changed the very nature of authority from vertical, in which people look to leaders in high position, to horizontal, in which people look toward the center of society to find leaders who are celebrities (defined by the number of people who recognize their names and faces):

Authority changes meaning, too, in a horizontal society. Authority is no longer vested in the holders of vertical power. . . . Leaders are no longer distant, awesome, and unknown; they are familiar figures on TV . . . the horizontal society is a celebrity society. The men and women who get and hold power become celebrities; and they exercise their power in a celebrity way. . . . The difference between a “celebrity” and an “authority” is fundamental: a celebrity is someone we know, or think we know, through the media, through publicity, that is, vicariously. . . . [B]y contrast, traditional authority was vertical, and the higher up the authority, the more stern, distant and remote it was.

### **Celebrity culture**

The change from a vertical to a horizontal perception of authority creates still another paradox: Americans now feel a greater personal connection with celebrities in remote locations than with local



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legal officials. Many people, for example, felt more emotional loss at the death of Princess Diana than they would at the death of a neighbor. Therefore, in spite of “community policing” or “community prosecution” programs designed to build relationships with legal officials in local neighborhoods, it is reasonable to assume that Americans are still more likely to base their impressions of the criminal justice system on television programs. The evidence is clear: On a Wednesday night when the police convene a neighborhood meeting, more residents are likely to stay home and watch television than attend the meeting, and the people being watched with the most interest are celebrities. They are people whose biographies citizens know, whose careers citizens watch, and whose opinions citizens often respect.

It may well be asked whether there are any celebrities in the criminal justice system and, if so, who they are: U.S. Supreme Court Chief Justice William Rehnquist? FBI Director Louis J. Freeh? Probably not, although they appear to fit Friedman’s characteristics of traditional authority: stern and distant. Television’s Judge Judy is an internationally recognized celebrity with far greater name and face recognition. From Australia to Europe and across the United States, it can be argued that Judge Judy sets a tone for the criminal justice system, modeling values and laying a foundation for personal trust—or mistrust—in legal authority.

Unfortunately, the entertainment values of show business conflict with the core values of legal institutions. Television sells audiences conflict and putdowns, tools that Judge Judy uses to portray a rude, in-your-face (but perhaps egalitarian) power-control image of the bench. Although audiences may find this fun to watch, the 1960s idea of a “power trip” leaves most Americans distrustful of those who exercise power for the fun of pushing people around. Judge Judy may confirm their worst fears and leave them reluctant to be involved with the legal system.

Some issues, however, have turned public officials into celebrities. Former Surgeon General C. Everett Koop, for example, achieved celebrity status largely as a result of his actions on AIDS and smoking. Once achieved, this status is a powerful tool, one that allows the celebrity to reach the public easily and compete more effectively in the new marketplace of ideas.<sup>69</sup> Some criminal justice leaders have also achieved celebrity status at the local level, including police chiefs Tony Bouza of Minneapolis and the late Frank Rizzo of Philadelphia.

The culture clash between law and entertainment makes it difficult to use celebrity power to convey messages about the trustworthiness of the criminal justice system. The reticence of the legal culture conflicts with the chattiness of celebrity culture; communication tactics that reach most citizens may offend criminal justice officials. One can imagine a legal official appearing weekly on a talk show to shore up public faith in the criminal justice system’s egalitarianism and fairness. One can also imagine such a strategy being condemned by leaders of the American Bar Association (ABA), conservative journalists, and others who defend authority’s traditional remoteness. The kind of public education programs the existing legal culture would approve of—such as special programs or public service announcements on radio and public television—seem unlikely to reach much of the public, let alone those citizens who most distrust the system. However, as James MacGregor Burns writes in *Leadership*, positive change can emerge only through conflict, in which leaders make tough choices and persuade followers to join them.<sup>70</sup>

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## One bad case

It may be especially important for celebrity power to say the right things in trying circumstances. Just as one airline crash undermines the public's faith in the overall safety of air travel, one poorly handled case can undermine the system's strong record of fairness and effectiveness. This is especially true for cases that symbolize legal officials' lack of egalitarian respect for the citizenry or discriminatory disregard for minority groups. Moore made the following observation after interviewing a brutal and corrupt New York City police officer:

I had the sense that this one cop could single-handedly wipe out the day-to-day diligent efforts of hundreds of officers trying to establish better working relationships in communities. My heart sank as I realized how vulnerable the overall legitimacy of the system was to the destructive influence of a relatively small number of bad encounters between officers and citizens.<sup>71</sup>

What makes such an influence destructive is its portrayal in the media. Anecdotal evidence of injustice often can be overcome only if a celebrity spokesperson can spread the message about the number of cases handled appropriately. Such a person could also reveal that the bad case is indeed indicative of more serious problems that must be addressed. Much of what could be done to deal with negative incidents and accomplish what the ABA meeting on trust and confidence suggested is to explain the law in ways that people find entertaining. That is a tall order, although an earlier generation found the trials of Perry Mason an irresistible weekly civics lesson. In a society in which basic understanding of law and the Constitution has never been especially high, explaining procedures may somehow increase the level of trust. If celebrities could accomplish that task, they could make the criminal justice system seem more "decent" and less "street," in the terms of inner-city street culture.

## Decent and street values

Based on years of field research in high-crime areas of Philadelphia, Anderson describes the following characteristics of the "decent" code of conduct followed by the majority of area residents:<sup>72</sup>

- Hopeful outlook.
- Mainstream values.
- Patience.
- Respect for authority.
- Avoidance of trouble.
- Predictability of punishment with thorough explanations of principles.

Anderson's observation of the code of the "street," by contrast, has the following dimensions:

- Bitter outlook.
- Antisystem values.
- Impatience.
- Disrespect for authority.

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- Demand for deference.
  - Unpredictability of punishment with scant explanations of principles.

It is clear that the actions of both citizens (including offenders and victims) and criminal justice officials vary between the ideals of decent and street conduct. This variation is found not only from person to person, but within a single person across time. Some people may behave decently most of the time but succumb to street conduct on infrequent occasions. Others may succumb more frequently, while still others may follow one of the codes more consistently. From this perspective, it is not only the “one brutal officer” that Moore<sup>73</sup> worries can destroy the work of thousands of good ones—it may also be the one bad moment experienced by a good officer that can cause such destruction.

**Values and the media.** The portrayal of criminal justice in news and entertainment media is often a morality play that explores the themes of street and decent values. Interviewers use provocative or insulting questions in attempts to make officials lose their tempers. Dramas portray heroes’ impatience with red tape and glorify their street enforcement of vengeance and the personal respect they command. Klockars describes this tension in law enforcement as “the Dirty Harry Problem,”<sup>74</sup> named after the Clint Eastwood character in the 1970s movie *Dirty Harry*. In the end, the protagonist does what he thinks is morally right and follows street, rather than decent, values for law enforcement.

The paradox of such media portrayals is that the more officials there are who break the rules out of distrust for decent government, the less reason there is for the public to believe the criminal justice system will treat citizens decently. Like horror movies that may cause nightmares, what is entertaining is not always reassuring. 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.

**Harmful effects of street sanctioning.** Exactly how much harmful impact the street conduct of criminal justice agents can have is revealed by experimental and quasi-experimental research on the effects of sanctions in diverse situations and at different levels of analysis. This research is consistent with the theory that street sanctioning styles interact with different types of citizen personalities and influence repeat offending in the following ways:

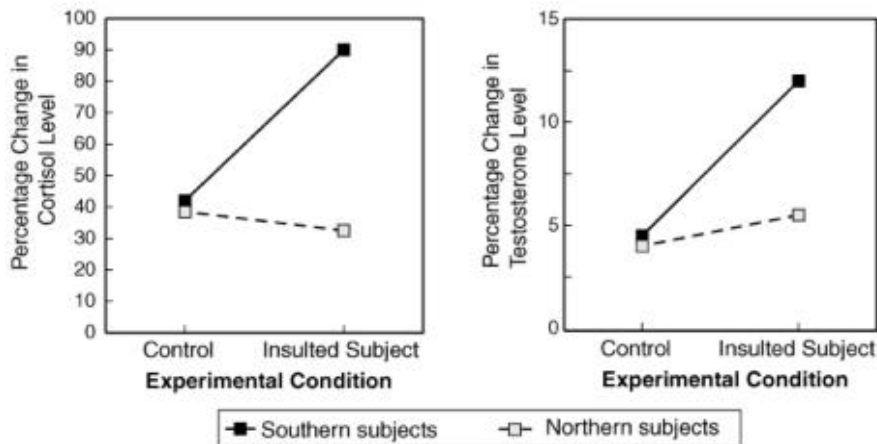
- Decent sanctioning of “decent” people produces the lowest repeat offending.
- Street sanctioning of “decent” people produces higher repeat offending.
- Decent sanctioning of “street” people may produce even higher repeat offending.
- Street sanctioning of “street” people produces the highest levels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

For the purpose of this paper, we need only consider the effects of street sanctioning on offenders.

**Street-code sanctioning.** The effect of such behavioral codes adopted and followed by people in positions of authority is always negative, but it is worse when actions involve others who have a street-code orientation. As Nisbett and Cohen’s<sup>75</sup> report of laboratory experiments at the University of Michigan shows, intentionally insulting behavior on the part of authority figures elicits different reactions based on the code an individual identifies with. Building on the literature describing southern culture as

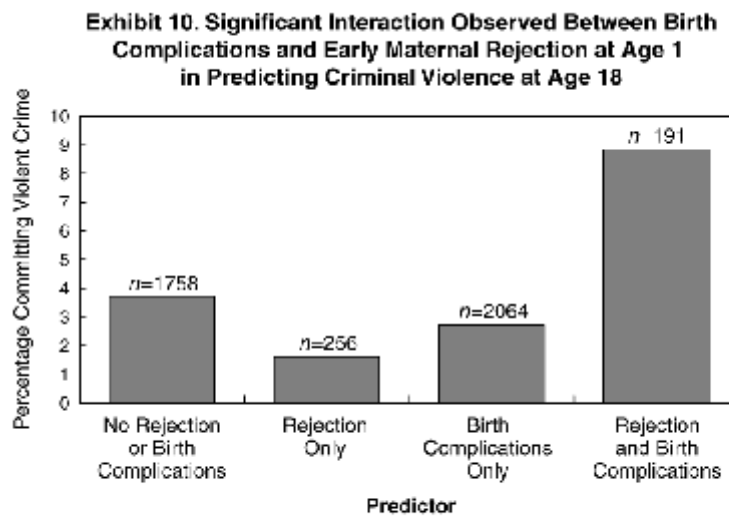
more inclined than northern culture to respond violently to insults, the researchers conducted an experiment in which they insulted both northern and southern student volunteers. In the close quarters of a laboratory, volunteers were asked to fill out a questionnaire and take it down the hall to place it in an “in” basket. On the way back, the volunteers were “accidentally” bumped by a lab worker who had to close a file cabinet to let them pass, which action the worker capped by calling each volunteer an “asshole.” Subjects raised in the South became much more angry in response to the insult than subjects raised in the North. Saliva samples of both cortisol (a stress hormone) and testosterone (an aggression-related hormone) taken before and after the insult also showed great differences by region of origin: The levels of both hormones rose for southerners, while for northerners the level of cortisol decreased and the level of testosterone rose only slightly.

**Exhibit 9. Change in Cortisol and Testosterone Levels in Saliva of Southerners and Northerners Following an Insult**



Source: Adapted from Nisbett, R.E., and D. Cohen, *Culture of Honor: The Psychology of Violence in the South*, Boulder, CO: Westview Press, 1996: 47.

The long-lasting nature of the variable effects of insult by authority is also evident in a study of early life experiences. Exhibit 10 shows the effect of maternal rejection by age 1 (including placement of the child in foster care) in a sample of Danish children.<sup>76</sup> There is essentially no difference in the risk of criminal violence by age 18 among children who were not rejected, who were rejected but who had no birth complications, and who had birth complications but were not rejected. The combination of the mother’s street-code behavior in rejecting the child and the child’s predisposition to street behavior by birth complications, however, doubles the risk of criminal violence compared with the other three groups.



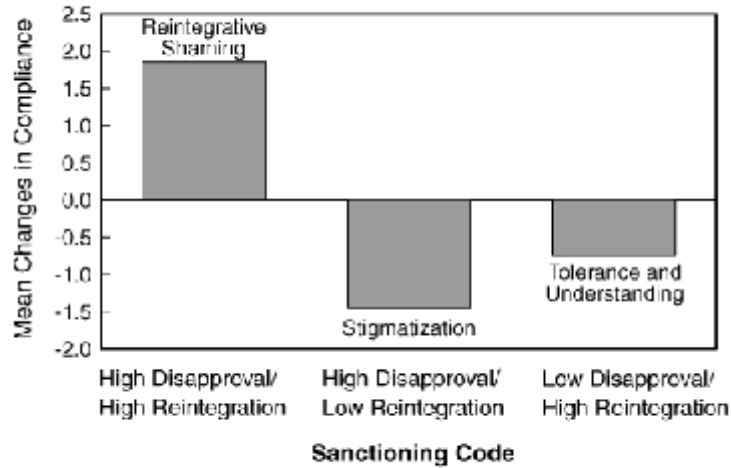
Note:  $P < .0001$ .

Source: Faine, A., P. Brennan, and S.A. Mechick, "Birth Complications Combined With Early Maternal Rejection at Age 1 Year Predispose to Violent Crime at Age 18 Years," *Archives of General Psychiatry* 51 (1994): 984–988.

Even more interesting is that the pattern in exhibit 10 is not found in the Danish lifecourse data for nonviolent offending. Maternal rejection and birth complications combined do not elevate the risk of property crime. This suggests an emotional component to the effect of insult on people who are already sensitive to such slights. Because violent offending is usually more likely than nonviolent offending to involve anger, it appears that officials who insult people who identify with street codes increase these individuals' risk of violence. Put in Fukuyama's terms, the demand for recognition and the potential for indignation among people with a street code makes the risk of insult by criminal justice officials—from Judge Judy to a patrol officer—even greater than for people in modern culture in general.

**Decent- versus street-code sanctioning of decent people.** The effects of different codes also persist when the citizen code is held constant and the sanctioning code varies. Makkai and Braithwaite's quasi-experimental study of nursing home operators<sup>77</sup>—who generally fit Anderson's code of decent conduct<sup>78</sup>—compared the effects of three different styles of sanctioning by regulatory agents who discovered violations of operating standards. One style fit Anderson's decent code as well as Braithwaite's theory of reintegrative shaming<sup>79</sup>: Condemn the sin, love the sinner, but insist on correcting the problem and not letting it happen again. The other two styles of regulatory agent conduct fit Anderson's harsh or inconsistent patterns of discipline by street-code parents. One style (stigmatization) condemned the sinner as well as the sin. The other style showed tolerance and understanding, but failed to insist on correcting the violations of operating standards. Exhibit 11 displays the results of the three styles of sanctioning as measured by the observed level of compliance with operating standards at the next visit. Compliance levels rose substantially among the nursing homes sanctioned by a decent code, but they fell among the homes sanctioned according to a street-code principle.

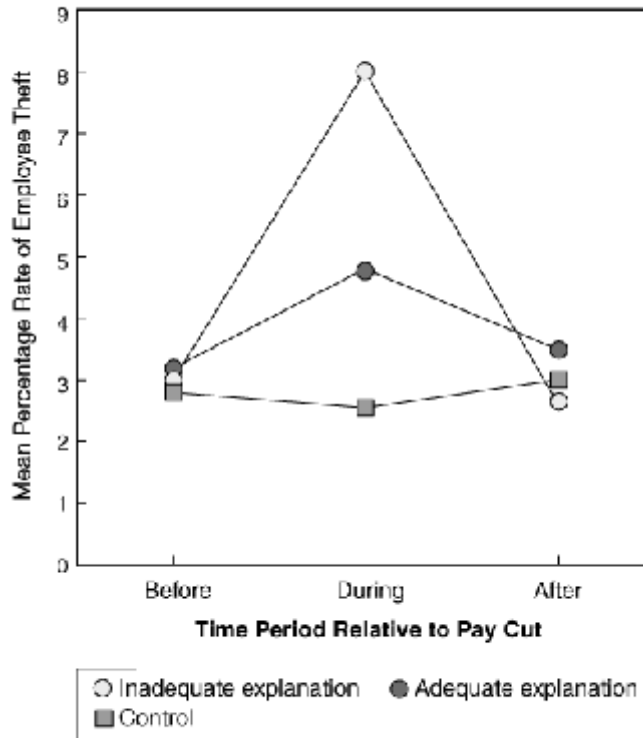
**Exhibit 11. Results of Three Sanctioning Codes Used on “Decent Code” Subjects**



Source: Macaw, T., and J. Braithwaite, "Reintegrative Shaming and Compliance With Regulatory Standards." *Criminology* 32 (1994): 301-335.

Greenberg reports similar results from an experiment that cut pay levels by 15 percent during a 10-week slowdown in work at a company with three factories.<sup>80</sup> The experiment compared levels of employee theft in each of the factories before, during, and after the pay cut. In the control factory, there was no cut in pay because that factory had enough work to keep busy. In another factory, management made every effort to adequately explain the pay cut, including a choice made between laying a few people off or cutting everyone’s pay, including management’s. In a 90-minute meeting with all workers there was a detailed briefing on the company’s orders, many expressions of remorse were offered, and the workers were treated with great respect. In the third factory, management simply announced the pay cut in a 15-minute meeting with minimal explanation and no apologies. Exhibit 12 shows that the factory workers who received an adequate explanation increased their employee theft rate during the wage reduction, but only by a modest amount. The workers in the factory where little explanation was provided, by contrast, almost tripled their level of employee theft during the wage reduction. Theft returned to pre-pay cut levels in both factories when the pay cut ended, suggesting a clear connection between theft and resentment over the action by authorities. But the large difference in the amount of increase between the two factories suggests that full explanation of bad news by people in authority can reduce resentment and help to build trust. Perhaps the same is true for judges, prosecutors, and police officers.

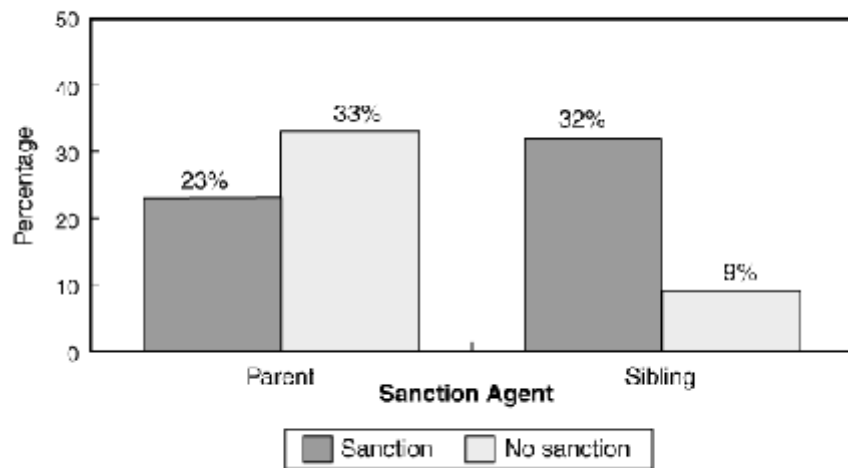
**Exhibit 12. Mean Percentage of Employee Theft as a Function of Time Relative to Pay Cut**



Source: Greenberg, J., "Employee Theft as a Reaction to Underpayment Inequity: The Hidden Cost of Pay Cuts," *Journal of Applied Psychology* 75 (1990): 561-568.

Acceptance of the authority of sanctioning agents appears to be crucial to compliance with the rules. One can arguably compare decent and street sanctioning styles according to who imposes the sanction. If the person imposing the sanction is accepted as legitimate, the imposed sanction is more likely to be viewed as decent than if the sanctioning agent is not accepted. Patterson's observations of decent families with decent-code children<sup>81</sup> shows exactly that. Exhibit 13 shows that when parents sanction these children, the children become less likely to persist in their misconduct. However, when siblings illegitimately attempt to sanction the same decent children, the children become more likely to persist in their misconduct. The same may be true of police or judges.

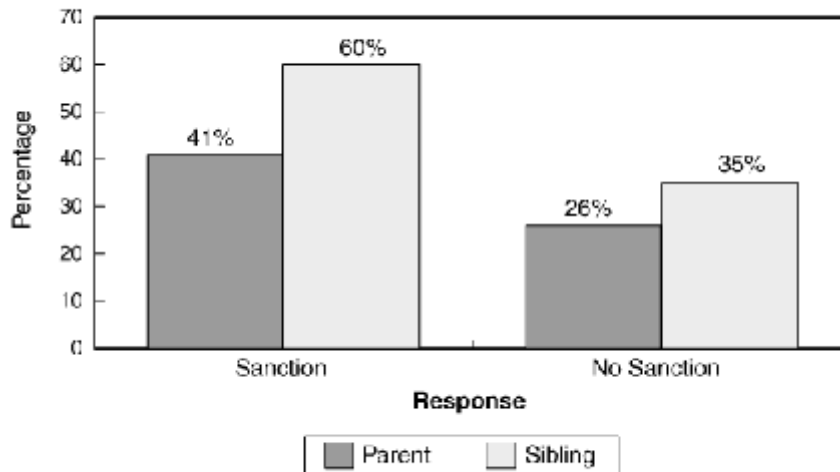
**Exhibit 13. Decent Families and Sanction Legitimacy:  
Child's Persistence in Misconduct After Response**



Source: Adapted from Reiss, Albert J., Jr., *The Police and the Public*, New Haven, CT: Yale University Press, 1971. © Yale University Press

**Decent- versus street-code sanctioning of street-code people.** Theoretically, the legitimacy of both the sanctioning agent and code is even more important for street code people. Patterson’s data show a direct comparison of sibling versus parent sanctioning in decent- versus street-code families.<sup>82</sup> Exhibit 14 shows that for street-code families, sanctioning backfires when administered by both parents and older siblings, but it backfires at a substantially higher level for siblings, raising the persistence in misconduct to 60 percent, compared with only 32 percent for decent-code families.

**Exhibit 14. Street Families and Sanction Legitimacy:  
Child's Persistence in Misconduct After Response**



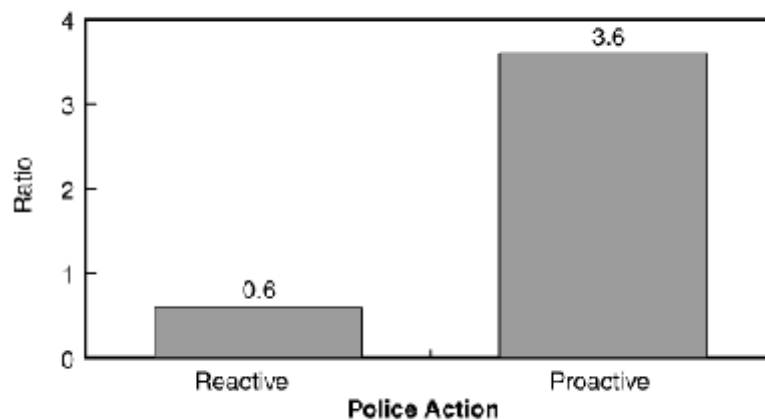
Source: Adapted from Reiss, Albert J., Jr., *The Police and the Public*, New Haven, CT: Yale University Press, 1971. © Yale University Press.



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It is not a very large leap to conclude from these findings that for the kind of people most likely to be involved with the criminal justice system, the legitimacy of the sanctioning agent, as perceived by the offender, makes a big difference in future compliance with rules. This conclusion is further supported by Reiss' analysis of resisting arrest charges in San Francisco.<sup>83</sup> Comparing the kinds of situations in which people resist arrest with the kinds of situations in which arrests are usually made, Reiss found that how the police become involved influences the situation's outcome. If the police are called into a situation "reactively" by a fellow citizen, an arrestee is much less likely to resist an arrest than if the police enter a situation "proactively" on their own authority. Exhibit 15 shows that the risk of resisting arrest is six times more likely to occur in proactive situations than in reactive situations.

**Exhibit 15. Resisting Arrest and Police Legitimacy:  
Ratio of Resist Arrest Charges to Encounters**



Source: Adapted from Reiss, Albert J., Jr., *The Police and the Public*, New Haven, CT: Yale University Press, 1971. © Yale University Press.

### **Respect by authority**

These findings consistently suggest the value of criminal justice officials showing more respect for, and taking more time to listen to, citizens involved in the system. 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 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. Slogans and programs based on hasty decisions to "do something now" may fall far short of the mark.

An example of such hasty decisions may be the New York City Police Department's decision, in the wake of the killing of Amidou Diallo (by four police officers in a proactive situation), to encourage police officers to be more polite. The program included handing out wallet-sized cards reminding police to say "sir" and "ma'am" when addressing citizens.<sup>84</sup> Whether such campaigns actually change police conduct remains to be seen. But police conduct can demonstrably be changed.

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

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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.<sup>85</sup>

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

In summary, it is useful to consider the major domains affecting public trust and confidence in the criminal justice system:

- 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.

Each area influences the others, with trust the product of all three combined. Trust is likely to increase only when changes in all three domains can be aligned to create more decent, egalitarian practices and values. Discovering how to make that happen is a daunting task, but data suggest that fairness builds trust in the criminal justice system and that trust builds compliance with the law. Thus, what is more fair is more effective, and to be effective it is necessary to be fair. More than three decades after the Omnibus Crime Control and Safe Streets Act of 1968 declared the goal of increasing the fairness and effectiveness of criminal justice, we have found that they may be the same thing.

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  23. *Ibid.*, 154.
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