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## RECONCILING RACE, SELF-INTEREST AND FAIRNESS: THE DILEMMA INHERENT IN AMERICAN DEMOCRACY

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About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government... Equal and exact justice to all men, ...the preservation of the General Government in its whole constitutional vigor, ... a jealous care of the right of election by the people, ...absolute acquiescence in the decisions of the majority...

-Thomas Jefferson's First Inaugural Address (1801)

Jefferson's sentiments seem to resonate with most Americans' notions of democracy and equality. "All men are created equal," "Justice is blind," "What's fair is fair..." These are familiar aphorisms, which communicate an important truth – a proper ordering of the world: that government by the people, for the people, decided by the majority of the people is fair and democratic. However, these abstract characterizations of democracy ignore the complexities of the context in which our government was created. Consideration of the historical circumstances in which democracy developed in America reveals some disturbing contradictions. America is a society which was founded upon the lofty and noble goals of "liberty and justice for all," and yet in the first Article of its Constitution was written a provision that Blacks should be counted as three-fifths of a person. Furthermore, great irony surrounded the circumstances of this nation's "birth." Even as colonists waged the American Revolution, offering emphatic protestations against their "enslavement" by King George III and the British Empire, they themselves persisted in enslaving African Americans. Higginbotham describes this American predicament aptly:

Yet while the revolutionary leaders had resolved to die free men rather than to live slaves, they did not perceive Blacks as having the same human right to be free. By their statutes the colonists had made it an act of treason, often punishable by death, for Blacks to dare to flee from slavery and seek to live as free men. Thus, the country's belief system was in conflict with its need to maintain a position of privilege undergirded by a slave labor force (1978).

From consideration of the historical context in which democracy developed in America, it is clear that a discussion of the history of race relations is vital to our understanding

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of what is meant by representative fairness. Democracy is not a concept occurring in the abstract. Neither is race simply another person category, like religious affiliation or age. Rather, race, self-interest, and group interest powerfully impact our constructions or *social representations*<sup>1</sup> of what is just and democratic. Therefore the relationship among these variables must be addressed in any complete discussion of democracy and fairness in this country. Indeed, the conflict described above has been discussed by numerous psychological, sociological, and legal theorists (Allport, 1954; Drake and Cayton, 1945; DuBois, 1903; Parsons and Clark, 1965; Higginbotham, 1978, 1996). It has been referred to as “the Negro Problem” (Myrdal, 1994), the “American Dilemma” (Myrdal, 1944), “the Dilemma of Power” (Clark, 1965), “a Self-Evident Lie” (Higginbotham, 1978), and it is the problem of trying to reconcile democracy and racism. These authors explore the relationship between democracy and race in America, addressing mechanisms of prejudice and discrimination, group relations, identity issues, White supremacy and Black inferiority, and the manner in which Americans (Black and White, alike) cope with this “paradox.”

Ever since the abolishment of slavery, American courthouses and legislative chambers have been grappling with the fallout from this “dilemma of power” as well – trying to reconcile and fairly balance the needs of the White majority against the competing needs of Blacks and other minority groups, within the constraints of a majoritarian system. Interestingly, Black and White Americans seem to be equally committed to our form of government as Jefferson described it. Despite continual rejection by both political parties, Blacks have maintained an unwavering vested interest in the American electoral system – seeing it as the means to equality and justice for *all*, just as do their White counterparts (for exhaustive reviews of history of voting rights and reapportionment litigation see, Davidson & Grofman, 1994, and of history of African Americans’ voting rights struggle, at the level of the electorate, see Gurin, Hatchett, & Jackson, 1989). It is generally agreed that “majority rules” is an efficient construction of democracy; it is simple – no runoffs are required and supermajority rules are not permitted. However, it leads to wasted votes and a sense of alienation for those who never get representation (see Guinier, 1993; Karlan, 1989; Tushnet, 1995). Thus, what is often at issue in voting rights and reapportionment cases is the appropriateness of strict majoritarian electoral schemes that provide no opportunity for

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<sup>1</sup> According to Moscovici, social representations are the tools through which we interpret and integrate the world, at once:

Social representations create pre-established and immediate frames of reference for opinions and perceptions within which objective reconstructions of both persons and situations occur automatically and which underlie individual experience (1984).

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minority representation. Black claimants often endorse the position that all significant groups deserve some level of representation – a “say” in the electoral process – in their arguments (see e.g., Beer v. United States, 1976; Dillard v. Baldwin County Board of Education, 1988; Gomez v. City of Watsonville, 1988; Lucas v. Forty-fourth General Assembly, 1964). These Black claimants argue that majoritarian systems can be constructed that would provide minority groups increased opportunities to elect representatives favoring their interests (such as, redrawing district lines to create a few majority Black districts within a larger single-member district system). However, White claimants frequently challenge the legality of such electoral and redistricting schemes on the basis of “reverse racism,” arguing race is disproportionately considered in the formulation of these schemes (see e.g., Shaw v. Reno, 1993; see also, Biskupic, 1997, 1999). As a result, consensus on mutually acceptable solutions has remained elusive.

Throughout psychological and legal literature we find evidence of the complexity inherent in resolving questions of fairness, especially with respect to important public policy decisions, such as that which is the concern of this paper – fairness in representative democracy. Social psychological studies of fairness and social exchange, interpersonal and intergroup dynamics suggest that fairness decisions may be influenced by numerous contextual factors, such as considerations of self (e.g., personal relevance, Brewer & Weber, 1994), group considerations – either one’s own group membership (e.g., minority vs. majority, Gruenfeld, 1995; stigmatized vs. non-stigmatized, Bodenhausen, 1988), or the group membership of others one is evaluating (e.g., minority vs. majority, Ruggiero & Taylor, 1997; in-group vs. out-group, Vecchio, Griffeth, and Hom, 1986), the judgment’s importance or implications (e.g., decision affects large group of people vs. small group vs. an individual, Leventhal, Younts, & Lund, 1972), the type of judgment – allocations (of goods or rewards, e.g., payments, Greenberg, 1983; or of punishments, e.g., negative experiences with police, Tyler, 1989) vs. conflicts of interest and dispute resolution (e.g., Thibaut & Walker, 1978; see also, decision-making in civil vs. criminal cases, Thomas & Hogue, 1976), and the presence or absence of competition (e.g., for scarce resources, Tyler & Degoey, 1995). I now turn to a brief discussion of the variables influencing judgments of fairness.

### **Theories of Distributive and Procedural Justice**

The fairness motive has been studied extensively by psychologists and sociologists (see e.g., Adams, 1965; Leventhal & Lane, 1970; Kahn, 1972; Thibaut, Walker, LaTour, & Houlden, 1974; LaTour, 1978; Walker, Lind, & Thibaut, 1979; Lind, Kurtz, Musante, Walker, & Thibaut, 1980; Greenberg, 1983, 1987; Tyler, Rasinski, & Griffin, 1986; Lind & Tyler, 1988; Brockner & Wiesenfeld, 1996; Van den Bos, Wilke, Lind, & Vermunt, 1998). One of the oldest formulations of a psychological theory of fairness

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is equity, or *distributive* justice (see e.g., Adams, 1963; Austin, McGinn, & Susmilch, 1980; Berger, Cohen, & Zelditch, 1972; Blau, 1964; Crosby, 1976; Homans, 1961). Distributive justice theories are concerned primarily with the fairness of an allocation or distribution of outcomes, specifying that in situations in which goods or services are exchanged, participants should be compensated or rewarded according to their relative contributions. An equitable relationship exists between two individuals when one individual's input-outcome ratio is proportional to the other individual's ratio. Theories of *procedural* justice, on the other hand, are concerned with the fairness of the processes by which outcomes are allocated or distributed among parties to an exchange (see e.g., Thibaut & Walker, 1975, 1978; Leung, 1987; Tyler, 1989; Lind, Kanfer, & Early, 1990; Van den Bos, Vermunt, & Wilke, 1997; Lind, Tyler & Huo, 1997; Van den Bos, Bruins, Wilke, & Dronkert, 1999). These authors have conducted numerous studies that investigate the effects of varying outcomes and procedures on subjects' assessments of fairness and the conditions in which procedures are more important than outcomes as determinants of fairness judgments. For example, Tyler and Caine (1981) found that subjects' satisfaction with teachers and leaders depended not only on the utility of the outcomes participants received, but even more so on the fairness of the procedures employed by those teachers and leaders.

Procedural justice researchers have been concerned also with understanding relationships among goals and preferences for different types of procedures, and have proposed a number of theories describing the motivational determinants of fairness judgments (see Brockner & Weisenfeld, 1996, for a review). The model Thibaut and Walker (1978) propose is concerned primarily with exchanges involving conflict, and the resolutions of those conflicts. They argue that when conflicts arise as a result of perceived inequity (i.e., conflicts of interest<sup>2</sup>), procedural justice can best be achieved by giving each disputant some control over the dispute resolution process ("process control"). They assert that giving disputants an opportunity to present (or "voice") as many of their inputs as possible will increase the likelihood that the dispute will be resolved and outcomes will be allocated fairly. A number of studies provide empirical support for and expand upon this theory (see e.g., LaTour, 1978; Lind, Kanfer, & Earley, 1990; Van den Bos, 1999). Lind and Tyler (1988) put forth a refinement of Thibaut and Walker's (1978) model. These authors, like Thibaut and Walker, place most of their emphasis on process fairness, as opposed to the fairness of outcomes. However, Lind and Tyler suggest that maximizing disputants' process control is but one factor that strongly influences peoples' process evaluations. Another important

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<sup>2</sup> Here, inputs and outcomes are defined quite broadly; for example, an input could be citizenship in a particular state, the commission of a crime, or negligence, and the respective outcome might be disfranchisement, damage to personal property, or a personal injury.

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consideration, they argue, is that rules should be unbiased and evenly administered, in addition to being reasonable in the first place. The presence of rational, impartial rules has important implications for an individual's status; it indicates how much an individual is valued by and/or where one fits into an exchange relationship, the legal system, society as a whole. In one study, Tyler (1989) found a significant difference between White Americans' and minorities' fairness evaluations of personal experiences with the legal authorities, with respect to social standing (as reflected in respondents' ratings of politeness and respectfulness in authorities treatment of them). Minorities emphasized status concerns to a greater extent than Whites in their evaluations of the legal authorities. In another study, Tyler and Degoey (1995) found evidence suggesting that the extent to which authorities are considered trustworthy, impartial, and respectful of their constituencies impacts those authorities' abilities to get public compliance in social dilemmas.

### **The Role of Self Interest and Group Interest in Fairness Judgments**

Various authors (see e.g., Diekman, Samuels, Ross, & Bazerman, 1997; Greenberg, 1983, 1987) have demonstrated that people not only are motivated to be "fair and evenhanded," but also prefer outcomes that are profitable to them and the groups with whom they identify. For example, Greenberg (1983) found a discrepancy in the behavior of actors and observers, when they assess the fairness of a distribution of outcomes. Both actors and observers judge inequitable allocations of outcomes as less fair than equitable allocations. However, actors judge inequitable allocations that are unprofitable to them as less fair than inequitable allocations that are profitable to them. Observers do not make this distinction between unprofitable and profitable inequity. Greenberg explains this pattern of results by positing an egocentric bias that exists in actors, but not in observers. Actors, he argues are egocentric, whereas, observers have no stake in either party benefiting from an inequitable distribution. Rather, one could infer, they identify equally with both parties involved in the exchange, and therefore are unbiased in their assessments of the allocation of outcomes.

However, other authors have found evidence that observers do have an asymmetric preference for outcomes, when they share membership or associate closely with the groups that stand to benefit or lose from the exchange. For example, Diekman, Samuels, Ross, and Bazerman (1997) found that an inequitable allocation of scholarship monies was judged fairer when it benefited participants' fellow schoolmates than when it benefited students attending another school. This then is additional evidence that to the extent that one identifies unequally with two parties in an exchange, one's fairness judgments will be biased in the direction of the party with which one identifies most closely. We extend this concept of self-interest and hypothesize that to the extent that one identifies with a claimant in a voting rights case and his or her minority group, a similar asymmetry will be observed.

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Taken together, this research suggests that assessments of the fairness of an electoral system should certainly be influenced by considerations of procedural and distributive justice. All other things held constant, systems that operate inequitably should be judged as unsatisfactory. However, these authors have also shown that there are circumstances in which some level of inequity will be construed as tolerable. Indeed, fairness determinations depend on many contextual factors, including, but not limited to, who is judging, what is being judged, who will benefit and who will lose as a result of the judgment, and prior or preexisting relationships between the potential “beneficiaries” and “losers.”

### **Contextual Factors in the Legal Literature**

The impact of a number of contextual factors are discussed in the legal literature as well. First, the importance of rights in question (e.g., equal treatment under the law, freedom of speech, right to participate) is taken into account by Justices deciding cases. Legal opinions in various areas of law discuss rights that are not equally important, that is, rights that take precedence over each other (e.g., from property, Moore v. Regents of the University of California, 1990; from Constitutional law, McCulloch v. Maryland, 1819; from voting rights case law, Colegrove et al. v. Green et al., 1946). Whether procedures were deliberately implemented for the purpose of discrimination, or have simply, by happenstance, resulted in inequitable outcomes for members of minorities is a second factor. Much of the legal debate which ensued following the 1982 amendments to the Voting Rights Act centered in fact around whether claimants need to demonstrate that procedures were designed with the specific intent of discriminating against minorities (termed, “discriminatory intent”) or, merely to establish that a procedure had a “discriminatory result” (see City of Mobile v. Bolden, 1980; Thornburg v. Gingles, 1986). A third factor is whether a plaintiff or defendant has some inherent right to bring a specific action before the court (e.g., having strong material interest, or an interest protected by the Constitution or Statutory law). For example, the 15<sup>th</sup> Amendment to the Constitution and the Voting Rights Act of 1965 were passed specifically for the purpose of providing legal protections of the voting rights of African Americans (and later, other minorities, see 1982 Amendments to the Voting Rights Act). A fourth factor is the impact of the existing law on claimants. The extent to which minority groups bear the effects of past discrimination (e.g., identifiable disparities in citizens’ quality of life, such as public access, along racial lines), the extent to which minority group members have been elected to public office, and the degree to which elected officials are unresponsive to the particularized needs of minorities are among important indicators considered by the Court as evidence that an electoral law has had a discriminatory impact (see CRS Rep. No. 91-736A, 1991).

Research is needed that builds on the interface between legal and psychological theo-

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ries of fairness, in order to ascertain what factors influence individuals' judgments of the fairness of various election systems and their preferences among those systems. In combining insights from these two literatures, a number of interesting questions arise: To what extent does a group's ability to elect candidates who represent its interests determine the status of group members as valued and legitimate members of society? What factors influence the receptivity of individuals to structural changes in electoral systems? What are the salient features utilized by individuals to evaluate the fairness of an electoral system? What factors influence determinations of what constitutes a fairly-apportioned legislative district? Answering these questions empirically will not only provide useful information to the legal debates and procedures by which the important problem of effective representation is resolved, but will contribute also to our general understanding of the psychology of decision-making in complex tasks, and of the variables and relationships among variables on which cultural effects are observable.

### **Acknowledgments**

This research was supported by a Dissertation Grant from the American Psychological Association Minority Fellowship Program and by funding from the Stanford University Department of Psychology. I am especially grateful to my dissertation advisor, Ewart A. C. Thomas, for critical feedback, guidance and support throughout the development of this research. I also wish to thank James S. Jackson, O. Jackson Cole, Tony N. Brown, and Robert J. Taylor for their helpful comments and suggestions.

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