

PSYCHOLOGY AND THE DESIGN OF LEGAL INSTITUTIONS

By Tom R. Tyler



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THE ART OF INSTITUTIONAL DESIGN

Introducing the third Montesquieu seminar

Willem J. Witteveen

The third Montesquieu seminar at the Law School of Tilburg University took place on April 15, 2007. It was dedicated to the art of institutional design. This is an art both old and new: Plato already contemplated a well ordered city state, while we moderns from many viewpoints still debate how order and freedom and justice can be organised better. In a conference room strategically located at the centre of the campus, scholars from various disciplines (law, psychology, criminology, behavioral economics) met that day to listen to Tom Tyler, an American psychologist who in 1990 published his classic study on a deceptively simple question: *Why do people obey the law?* The book had argued on the basis of impressive evidence that people, in America at least, obey the law because they believe the rules and regulations are legitimate and that official procedures are fair, not because they fear punishment or other sanctions. It was a remarkable thesis at the time that went against the grain of the policy theories of most legislators and law enforcement officials who clearly believed in deterrence. As they still do. We sat there listening to Tyler relate the findings of subsequent research into law's legitimacy. It turned out the original thesis still stood, even though by now it had been elaborated and refined.

It was not that deterrence never worked, argued Tyler, but sanctioning systems always required near constant surveillance of individual behaviour. And the deterrence model probably worked best in the case of crimes that are committed for instrumental reasons, such as burglary, but it did not work well with crimes motivated by temporary emotional states, such as rape or assault. A big problem

was always that risk estimates needed to be high enough to exceed a threshold of psychological meaningfulness.

While deterrence strategies often simply could not be effective, they were overused with dramatic effects for the nature of American society. Tyler pointed at the large proportion of the population held in prison, with figures exceeding those of other countries. Most prisoners were moreover members of racial and ethnic minority groups, which indicated serious disruptions of life conditions in families and groups. There even was a 'pernicious social dynamic of severity of punishment', added Tyler. When stiff penalties do not work, it is tempting to go for even more severe sanctions, in the hope that these will be effective. As a result, the general level of sanctions goes up, while people do not seem to obey the rules supported by the heavier sanctions any better. In the United States there is a constant increase in the number of offences that receive the death penalty.

At his point in the argument being unfolded in the conference room that afternoon, it was suddenly possible to see why the seminar had been dedicated to Montesquieu. This French philosopher and jurist who was also a pioneer of the social sciences, had after all in his major work *The Spirit of the Laws* (1748) warned that political systems designed for the freedom of their members must take great care to avoid precisely the trap Tyler now described as 'a pernicious social dynamic'. In his chapter *On the power of penalties*, (Book 6, Chapter 12) Montesquieu writes:

'Is some defect felt in a state? A violent government wants to correct it instantly; and, instead of considering that the old laws should be executed, one establishes a cruel penalty that checks the ill then and there. But the spring of the government wears down; the imagination becomes inured to this heavier penalty as it had to the lesser, and as fear of the lesser penalty diminishes, one is soon

forced to establish the heavier in every case. Highway robberies were common in some states; one wanted to check them; the punishment of the wheel was invented, which halted them for a while. Since that time there have been robberies on the highways as before.'

Montesquieu argued for moderation in governance, and for empirical analyses of the basic motivations of the inhabitants of various political systems. Tyler reasoned likewise. He made an argument about the kinds of motivations that further compliance with rules and regulations. Values definitely are important. 'People are more likely to obey rules if those rules accord with two important values: legitimacy and morality.' And then the values one should look at are rooted in procedural justice. 'When people see legal authorities exercising their authority in just ways, they are more likely to indicate that the laws themselves are consistent with their moral values.' Procedural fairness is really the key to effective social regulation. 'The authorities can gain a great deal in terms of legitimacy and morality, when they follow clear norms of procedural justice, including impartiality, transparency, and respect for human dignity.' And so, in designing legal institutions, it would be prudent to follow this line of argument about moral reasons (versus the rationality of sanctioning) and to make arrangements conducive to procedural justice.

By now, the seminar was deep in concentration. As more empirical evidence was presented and listeners were thinking of their own questions or objections, it was also clear that the kind of research that is possible today for researchers in law, psychology and the social sciences generally has one great advantage over Montesquieu: the possibility of empirical testing. In this book, the reader will find the full argument Tyler made that remarkable afternoon in Tilburg, supplemented with the empirical evidence that in the last fifteen years has been painstakingly collected.

PSYCHOLOGY AND THE DESIGN OF LEGAL INSTITUTIONS

Tom R. Tyler

I. INTRODUCTION

It is a great honor for me to be asked to deliver the baron de Montesquieu lecture at Tilburg University. As I am sure you are aware, Montesquieu is one of the most frequently quoted authorities on government and politics in the pre-revolutionary period in the United States and had a great influence upon the fathers of our Constitutional system, in particular James Madison. I say this not to excessively venerate the particular form of the American Constitutional system which has had its share of critics, but out of respect for the tremendous influence that Montesquieu's ideas have had upon the structure of America's government.

If Montesquieu were alive today, I think he would be very comfortable taking a place among contemporary comparative constitutional scholars. For example, a recent scholarly effort that shares many features with his approach is the 2002 book *How Democratic is the American Constitution*, by Robert Dahl. Like Montesquieu, Dahl uses cross-societal comparisons of governmental structures as a framework for evaluating different types of constitutions, including the American structure of government.

The feature of constitutional design that Americans frequently associate with Montesquieu is the separation of power. He developed the idea of having three distinct and equally powerful administrative branches of government: the executive, the legislative, and the judicial. He advocated the creation of these three branches to

achieve the objective of creating a balance of power in which no single branch would be able to exceed the authority of the others.

In this discussion I want to focus on an aspect of Montesquieu's writing that underlies his idea of the separation of power – his views about human nature. The Federalist papers contain lengthy discussions about human nature. Early American political leaders were taken by the idea that, human nature being what they believed it to be, government should be designed so as to limit the ability of any particular person or group to gain too much power. These early Americans accepted the idea that “power corrupts, and absolute power corrupts absolutely”¹ and sought to create a government that checked these human tendencies. In this respect, these early leaders shared a common view of human nature with Montesquieu, who was also concerned about similar aspects of human nature as he understood it.

I am not going to speak to you today about something as grand in vision as a new conception of government or law. Rather I want to talk about the role that our assumptions about human nature play in our design of the legal system. Like Montesquieu and the founders of American government, modern legal scholars are also influenced in their efforts to design legal institutions by their beliefs about the nature of human nature. However, we have an advantage that was not afforded to these early proponents of natural rights and natural law. We have more systematic social science methods for testing our intuitions about human nature, so we have more rigorous ways to determine the basis of human behavior. In fact, we have entire fields of scientific study – psychology and the other social sciences – that seek to provide those in the fields of law, political science, management, and public policy with insights about the psychology of the person and the social environment.

¹ A quote attributed to the historian Lord Acton.

I will argue that both law and the social sciences benefit when law is designed using scientifically derived information about the nature of human nature which is, by virtue of its empirical foundations, likely to be accurate.

Human motivation

The psychology of the person is a broad topic, which impacts many aspects of law and the legal system. I want to speak to you today about only one aspect of this large issue; the nature of human motivation. This issue has been the focus of my own work and is a topic where social science has a great deal to tell legal authorities and legal scholars, much of which is not represented in current legal thinking, at least within the American context.

To frame this issue I will discuss one of the core objectives of the law – securing compliance. One of the main functions of the law is to regulate the behavior of the citizenry by maximizing the likelihood that people will comply with normative standards of conduct, i.e. with socially shared definitions of acceptable conduct as they are enshrined in rules, norms, and laws. If the law is to be effective in fulfilling its regulatory role, most citizens must obey most laws most of the time.² The need for legal authorities to secure compliance has been widely noted by legal scholars and social scientists. Fuller (1971), for instance, observed that: “The lawgiver must be able to anticipate that the citizenry as a whole will ... generally observe the body of rules he has promulgated” (p. 201). Decisions made by police officers and judges mean little if people fail to take them seriously, and laws lack importance if they do not affect public behavior.³

² Easton, 1965, 1975; Tyler, 2006a, 2006b.

³ Tyler, 2006a; Tyler and Huo, 2002.

The law is concerned with two compliance issues. The first is compliance with the law in everyday life. The second is compliance in response to the particular decisions made by legal authorities, for example police officers and judges. Both of these types of compliance are potentially contentious issues, since the law by its very nature focuses upon regulating people's desires and often requires people to accept rules and decisions that do not give them what they want or what they may feel that they deserve. As a consequence, although widespread behavioral compliance is necessary to the effective functioning of society, obtaining compliance cannot be taken for granted.⁴

The problems involved in obtaining compliance with the law in everyday life can be illustrated with a wide variety of behaviors, ranging from traffic laws to drug laws and taxes. In each case, while most people comply most of the time, legal authorities are confronted with sufficient noncompliance to be challenging to the resources normally devoted to social control. And, in situations such as the illegal downloading of music and the illegal copying of movies levels of noncompliance are so high as to make effective regulation very difficult.

Similar problems arise with the decisions of legal authorities. Problems with noncompliance with the decisions of judges are longstanding. One major motivation for the alternative dispute resolution, which seeks alternative forums to traditional courtrooms, is the effort to find a way to increase the willingness to accept the decisions made by third-party authorities. In family court, for example, judges have struggled to find ways to make decisions about child custody and child support that would be willingly followed by both fathers and mothers and that would, to the degree possible, create positive post separation dynamics in which both parents

⁴ E.g., Sherman, 1993.

took responsibility for supporting their children financial and emotionally.⁵

In the case of the police, Mastrofski, Snipes, and Supina (1996) note that: "Although deference to legal authorities is the norm, disobedience occurs with sufficient frequency that skill in handling the rebellious, the disgruntled, and the hard to manage – or those potentially so – has become the street officer's performance litmus test (p. 272)." Their observational study of police encounters with the public in Richmond, Virginia provides useful evidence concerning the frequency of noncompliance. Mastrofski et al. estimated an overall noncompliance rate of 22%. Citizens failed to comply with police requests 18% of the time when they were told to cease illegal behavior, 19% of the time when they were told to leave another person alone, and 33% of the time when they were instructed to stop some form of disorder. Similar results were obtained in a replication by McCluskey, Mastrofski, and Parks (1998) in Indianapolis and St. Petersburg. The overall noncompliance rate was 20%. Citizens resisted 14% of the time when asked to leave another person alone, 21% of the time when ordered to cease illegal behavior, and 25% of the time when told to stop engaging in disorder.

These studies investigated short-term compliance – that is, whether the person behaved as instructed – and not whether people willingly accepted the decisions made by the authorities, bought into their resolution of a problem, or believed that the restrictions on their behavior were reasonable or appropriate. However, as Mastrofski et al. (1996) note in commenting on their own research, "citizens who acquiesce at the scene can renege" (p. 283). If citizens fail to fully agree with legal restrictions, further police intervention will eventually be required. Hence, the legal system is also

⁵ Dillon and Emery, 1996; Emery, Matthews, and Kitzman, 1994; Kitzmann and Emery, 1993.

concerned with its ability to gain long-term compliance, not just immediate compliance. This concern is illustrated in the previously mentioned studies on family courts, in which the goal is for parents to be sharing financial and emotional child-rearing responsibilities long after the court case is over.

Alternative models of motivation

I want to make two arguments about the motivations that lead to compliance in these types of situations. These arguments form the basis for a self-regulatory model of authority, the model I wish to advocate in this essay.

The first argument is that values matter. People are more likely to obey rules if those rules accord with two important values: legitimacy and morality. Perhaps most centrally, people obey rules when they view those rules as being more legitimate. Further, they obey them when the rules accord with their personal views about what is right and wrong. These effects are distinct from the influence of people's fears of sanctioning for noncompliance, and I will argue that they are stronger.

Second, I will argue that values are rooted in procedural justice. In particular, people think that rules are legitimate if they believe that the authorities are exercising their authority in fair ways. Further, I will argue, procedural justice facilitates the belief that laws are morally appropriate. In other words, when people see legal authorities exercising their authority in just ways, they are more likely to indicate that the laws themselves are consistent with their moral values. In both cases people are influenced both by their evaluations of the quality of decision making and the quality of the interpersonal treatment that people receive from authorities. These elements of procedural justice will be elaborated later in this essay.

The value of the empiricism of psychology is that these arguments can be tested empirically. In my own work I do so by interviewing people and examining what they think and what they report that they do. Based upon this data, I explore whether the argument I have outlined is valid.

II. THE DETERRENCE MODEL

The model I am proposing can be contrasted to a model of social control that links behavior to the fear of punishment for wrongdoing. In recent decades the exercise of legal authority has become primarily associated with the use of threat and punishment aimed at deterring people from engaging in criminal behavior.⁶ From this perspective, the focus is (and should be) on the power of legal authorities and institutions to shape behavior by threatening to deliver (or by actually delivering) negative sanctions for rule-breaking. Within legal circles, this way of viewing the relationship between legal authorities and citizens is referred to as the “deterrence” or “social control” model, and it is this model of human behavior that – for better or worse – currently dominates law and public policy.

There are two aspects of deterrence policy. First is the suggestion that people’s law related behavior is shaped by their expectations about the likely punishment that will result from rule breaking. People could potentially be influenced by their estimates of the likelihood of punishment, the severity of punishment, or both. Second, if they are caught and punished for wrongdoing, deterrence models suggest that the probability of punishment shapes the likelihood of post-punishment wrongdoing.

Judges, for example, attempt to influence people’s acceptance of their decisions by threatening fines or jail time for failure to comply. Similarly, police officers carry guns and clubs, and they are empowered to threaten citizens with physical injury and incapacitation, among other penalties. The goal is to establish legal authority and, as Reiss (1971) points out, “The uniform, badge, truncheon, and arms all may play a role in asserting authority” in the effort to

⁶ E.g., Kahan, 1999; Nagin, 1998.

“gain control of the situation” (p. 46). The police thereby seek to gain control over the individual’s behavior “by manipulating an individual’s calculus regarding whether ‘crime pays’ in any particular instance”.⁷

More generally, agents of the legal system who are charged with producing compliant behavior concern themselves with shaping environmental contingencies in such a way that citizens will be faced with the prospect of heavy losses (e.g., incarceration) that are intended to outweigh the anticipated gains of engaging in criminal behavior. The deterrence model dictates that the responsibility of lawmakers is to decide which acts should be prevented, and then to specify sufficiently strict penalties – generally fines or prison terms – so that the prohibited behavior is rarely enacted.

The notion that people’s behavior with respect to the law is shaped by calculations of expected gains and losses is a core premise of rational choice theory, which is derived from neoclassical economics.⁸ It is assumed that most people will calculate expected utilities by multiplying the probability of an outcome (e.g., getting caught for armed robbery or drunk driving) by its valence (very, very bad). If the laws are well-calibrated, people will arrive at the desired conclusion that they should follow the law. Thus, rational self-interest is the motivational engine of the deterrence/social control model. To regulate behavior, this model suggests that decision-makers should adjust criminal sanctions to the needed level so that the expected losses associated with law-breaking will minimize the likelihood that people will break the law.

My critique of the deterrence model is based upon the argument that it is a costly and minimally effective system of social control. The high cost of the system stems from the need to create and

maintain a credible threat of punishment. People will only change their behavior when they feel that there is a reasonable risk of being caught and punished for wrongdoing. And, of course, they will try to hide their illegal behavior, so a system of surveillance will be needed to identify wrongdoing.

The problems of surveillance are central to deterrence models, since research suggests that it is the probability of punishment, not its severity, that shapes rule related behavior. As a consequence, a system for detecting wrongdoing must be created and maintained. It is not realistic to substitute draconian punishments for a more costly system that creates credible risks of being detected while engaging in wrongdoing. For this reason, as Meares (2000) notes, the effectiveness of “instrumental means of producing compliance always depend[s] on resource limits” (p. 401). The relevant questions are how much in terms of financial and other benefits and burdens authorities are willing to expend in order to control crime, and how much power to intrude into citizens’ lives people are willing to allow the authorities to have?

Research does support the notion that variations in the perceived certainty of punishment do affect people’s compliance with the law, at least to some degree. People’s behavior is often, though not always, shaped by their estimate of the likelihood that, if they disobey the law, they will be caught and punished.⁹

At the same time, however, perceptions of the likelihood of being caught and punished seem to have a relatively minor influence on people’s behavior, as we will see.¹⁰ Consequently, social control strategies based exclusively on a deterrence model of human be-

⁷ Meares, 2000, p. 396.

⁸ Blumstein, Cohen, and Nagin, 1978; Nagin, 1998.

⁹ See Nagin and Paternoster, 1991; Paternoster, 1987, 1989; Paternoster and Iovanni, 1986; Paternoster, Saltzman, Waldo, Chiricos, 1983.

¹⁰ MacCoun, 1993; Robinson and Darley, 1995, 1997; Ross, 1982.

havior have had at best limited success.” An example is the analysis by MacCoun (1993), which shows that variations in the certainty and severity of punishment for drug use account for approximately 5% of the variance in drug use behavior, a finding consistent with the suggestion of Paternoster (1987) that “perceived certainty [of punishment] plays virtually no role in explaining deviant/criminal conduct (p. 191)”. Hence, deterrence is a very high cost strategy that yields identifiable, but weak, results.

Ross (1982) focuses on the problem of drunk-driving to outline some of the problems associated with using deterrence to shape law-related behavior. He suggests that raising risk estimates to a level that is high enough to lower the rate of law-breaking behavior, while not necessarily impossible, involves prohibitively high costs in terms of police manpower and people’s willingness to accept state intrusions into their personal lives. Interestingly, Ross finds that changes in laws can lead to short-term declines in law breaking because the high level of media exposure to police activities leads people to temporarily overestimate the risks of being caught and punished for law-breaking behavior. Ross further points out that even the intensive efforts of Scandinavian authorities to create high estimates of risk using random road blocks and other similarly expensive and intrusive law enforcement measures are insufficient to create and maintain subjective risk estimates that are high enough to deter drunk-driving over the long-term.

Of course, deterrence is not always an equally effective or ineffective strategy. One of the key problems with sanctioning systems, however, is that they require near-constant surveillance of individual behavior. For obvious reasons, people are strongly motivated to hide their behavior from authorities to avoid punishment; authorities must therefore develop surveillance systems for detecting rule-

breaking behavior. Deterrence is more effective when surveillance is easy, because the structure of the situation makes it easy. For example, wage earner’s incomes are easy for the government to monitor, because businesses withhold percentages from each paycheck and send the withheld amount to the government. This makes tax violations among this group relatively easy to prosecute. In other cases, however, surveillance can be quite difficult. The police, for example, have tremendous difficulty monitoring public behavior in order to identify people who are using illegal drugs, just as tax authorities have trouble monitoring the incomes of street vendors, waiters and waitresses, and small businesspeople.

The deterrence model probably also works best in the case of crimes that are committed for instrumental reasons. For example, car theft, burglary, and instrumentally motivated crimes of this type are at least to some extent motivated by calculations about the costs and benefits expected from law-breaking behavior. Thus, deterrence approaches work best in affecting the occurrence of instrumentally motivated crimes, i.e. by crimes that are motivated by rational calculations about gain and loss. So, for example, it is known that target hardening – making one’s home resistant to burglary by putting in locks – is very effective since instrumentally motivated thieves quickly move to the next home. Similarly, locking one’s cars is very effective in lowering the likelihood that it will be stolen. These instrumental actions are significantly less effective in controlling criminal behavior that is motivated by factors other than economic gain. For example, when rape or murder occur in the context of a specific relationship the wrongdoer is unlikely to simply move to other victims when they encounter difficulties.

There are many other crimes that are motivated not by instrumental concerns but by temporary emotional states. For example, crimes such as rape, assault, and many murders occur on the “spur of the moment” and in the “heat of passion.” In such cases, the

¹¹ See also Tyler, 1997a, 1997b, 1997c; 1998.

assumption that rational calculations of costs and benefits enter into the perpetrator's "decision" about whether or not to commit such crimes is naïve in the extreme. In part, this is because of intrapersonal empathy gaps: the person who is in a hot state cannot access or identify with how he or she will think or feel later upon returning to a cold state. Thus, crimes of passion as well as crimes committed under states of intoxication are relatively unaffected by deterrence strategies, regardless of the actual or even perceived likelihood of being caught and punished for wrongdoing.

Deterrence works reasonably well in at least some cases, such as murder, because society has devoted considerable resources to preventing murder and enforcing penalties for it. The objective risk of being caught and punished for murder is relatively high: approximately 45%.¹² The likelihood of being caught for committing a murder is high enough for deterrence to be effective in lowering the murder rate. Even in this case, however, criminals are not as sensitive to the magnitude of the penalty as they are to the estimated probability of being apprehended. As a result, capital punishment does not serve to deter murder more effectively than does life imprisonment.¹³

The lack of a direct correspondence between objective and subjective risks leads to another problem with the psychology of the deterrence model, namely its failure to take into account "threshold effects." That is, to influence people's behavior at all, risk estimates need to be high enough to exceed some threshold of being psychologically meaningful.¹⁴ In most situations the objective risk of being caught and punished is quite low. For example, the approximate objective risk of being caught, convicted, and imprisoned for rape is 12%; for robbery it is 4%; and for assault, burglary, larceny, and

¹² Robinson and Darley, 1997.

¹³ Ellsworth & Mauro, 1998.

¹⁴ Ross, 1982; Teevan, 1975.

motor vehicle theft the incarceration rate is approximately 1%.¹⁵ Of course, psychologists know that subjective estimates of risk are stronger determinants of people's behavior than are objective risks. However, research suggests that subjective risk estimates for infrequent events are, if anything, even lower than are objective risks.¹⁶ Furthermore, it is reasonable to assume that people's estimates of whether or not they will be apprehended by the police are subject to egocentric biases and the "illusion of invulnerability".¹⁷

Troubling side effects of the Deterrence Model

The deterrence model has had dramatic effects on the nature of American society. Consider the case of the American prison population.¹⁸ Because of the widespread belief that crime is deterred by the threat and/or the experience of punishment, a massive number of American citizens have been convicted and sentenced to serve time in American prisons. Today, the U.S. is a world leader in the proportion of citizens it holds in prison. In 2000, there were over 2 million Americans in jail or prison,¹⁹ far surpassing incarceration rates in Europe and elsewhere.²⁰

The heavy costs of imprisonment to individuals and communities have had a strong impact upon the communities of America, especially urban communities and especially among members of racial and ethnic minority groups, which are overrepresented in the prison system. However, those costs are not only borne by this smaller group. Using the broken windows version of deterrence, many people have been subjected to legal sanctions for minor life-

¹⁵ Robinson and Darley, 1997.

¹⁶ E.g., Bazerman, 1990.

¹⁷ Dunning, 1999; Taylor & Brown, 1988.

¹⁸ Haney and Zimbardo, 1998.

¹⁹ United States Department of Justice, 2001.

²⁰ Garland, 2001.

style crimes, spending time in local jails or being fined for everyday illegal behavior.

A derivative problem with deterrence is the pernicious social dynamic of severity of punishment. Because deterrence is marginally effective authorities who are spending large sums of money typically find that their policies are at best minimally effective. One solution is to spend more money to deploy even larger forces of social control – i.e. more people to enforce the orders of judges and to ensure that laws are obeyed. However, there is a natural reluctance to commit high levels or resources, so the solution of increasing severity of punishment becomes politically attractive. While evidence suggests that increases in the severity of punishment have little impact upon behavior, there is political pressure to increase severity. An example, within the United States, is the constant increase in the number of offenses that receive the death penalty. The use of severe punishment offers the tantalizing prospect of low cost deterrence.

Not surprisingly, resources must be deployed in strategic and cost-effective ways to maximize deterrence. Sherman (1998) notes that within the United States policing services are typically used more in response to political pressures than to actual crime threat levels. As a result, police officers do not most heavily patrol the highest crime areas, so the ability of the police to deter crime is typically suboptimal. Sherman suggests that a greater effort is needed to put surveillance where the crime problem lies. Current deployments reflect the reality that public resources are allocated in ways that respond to political pressures, and the effective implementation of social control strategies often conflicts with those pressures. Hence, many aspects of the legal system are politically motivated.

Second, the use of surveillance systems has deleterious effects on the social climate of groups. The use of surveillance implies dis-

trust, which decreases people's ability to feel positively about themselves, their groups, and the system itself.²¹ Furthermore, people may experience intrusions into their lives as procedurally unfair, leading to anger and other negative emotions often associated with perceptions of injustice.²² Whether surveillance works or not, then, it is often demotivating and introduces new costs in terms of distrust and perhaps even paranoia in subsequent social interaction. Such costs are borne by groups, organizations, and societies to which people belong, as they lose the gains that occur when people are willing to cooperate with each other. Research suggests that the increasing use of deterrence strategies and social control has exerted precisely this type of negative influence on the American social climate. It has created an adversarial relationship between legal authorities and members of the communities they serve, especially with respect to racial and ethnic minority group members,²³ leading the public to grow less compliant with the law and less willing to help the police to fight crime.²⁴

Third, an analysis in terms of general principles of human motivation further suggests that if people comply with the law only in response to coercive power, they will be less likely to obey the law in the future because acting in response to external pressures diminishes internal motivations to engage in a behavior.²⁵ This follows from the well-known distinction in social psychology between intrinsic and extrinsic motivation. Research on intrinsic motivation shows that when people are motivated solely by the prospect of obtaining external rewards and punishments they become less likely to perform the desired behavior in the absence of such environ-

²¹ E.g., Kramer & Jost, 2002; Kramer & Tyler, 1996.

²² E.g., Gurr, 1970; Tyler & Smith, 1998.

²³ Tyler and Huo, 2002.

²⁴ Sunshine and Tyler, 2003a.

²⁵ E.g., Brehm, 1966; French & Raven, 1959; Tyler & Blader, 2000.

mental reinforcements.²⁶ On the other hand, if people are motivated by intrinsic reasons for behaving in a certain way, then their compliance becomes much more reliable and less context-dependent.

Studies of regulatory authorities indeed demonstrate that seeking to regulate behavior through the use of threat serves to undermine people's commitment to rules and authorities.²⁷ As has been noted, from a motivational perspective, instrumental approaches are not self-sustaining and require the maintenance of institutions and authorities that can keep the probability of detection for wrongdoing at a sufficiently high level to constantly motivate the public through external means (i.e., the threat of punishment). Over time it becomes more and more important to have such external constraints in place, for whatever intrinsic motivation people originally had is gradually "crowded out" by external concerns.

The undermining effects of deterrence do not only occur among the people being regulated. When authorities manage people by surveillance, they do not build up any basis for trusting them. For example, employees who have been given the opportunity to follow rules for internal reasons demonstrate to workplace authorities when they do so that they can be trusted. Subsequently, authorities are more comfortable allowing those individuals to work without supervision. However, when authorities are constantly present, they have no basis for trust and can suspect that the moment they leave people will stop following the rules. Hence, their very behavior of surveillance creates the conditions requiring future surveillance. And, as noted above, their suspicions are at least partially justified, since their surveillance has probably had the effect of undermining people's value-based motivations for obeying the law.

The inadequacy of the deterrence model in general has led to widespread calls from legal authorities and scholars of social science to help in understanding how to secure the effective rule of law. Their concerns suggest that current models of the determinants of human behavior are not providing legal authorities with an adequate basis for effective social regulation. This presents an important opportunity for psychologists to put forward a new and more empirically grounded perspective on the relationship between the individual and society and the following of social rules. Taking psychology seriously means linking our understanding of motivation and social influence in legal contexts to a broader psychological understanding of the person.²⁸

In my experience legal authorities acknowledge these problems, but say that there is no better system available. Hence, they accept the high cost – low impact – deterrence system by default. They then live with its troubling side effects. The difficulty over time has been that many of these side effects are cumulative. So, the costs of incarceration are increasing as the prison population grows, while the undermining effects of deterrence on trust and confidence in legal authorities, as well as in intrinsic motivations for rule following, grow over time. As these social dynamics unfold, the pressure to find other solutions increases. The purpose of this essay is to propose such an alternative solution.

²⁶ E.g., Deci, 1975.

²⁷ Frey, 1994; Frey and Oberholzer-Gee, 1997.

²⁸ E.g., see Cohn and White, 1990; Krislov, Boyum, Clark, Shaefer, & White, 1966; Melton, 1985; Tapp and Levine, 1977.

III. AN ALTERNATIVE MODEL BASED ON LEGITIMACY AND MORALITY

Most legal scholarship addresses issues of motivation and rule-following in the context of deterrence and social control, that is, by imposing external constraints on people largely through the threat of punishment. Social psychologists can contribute to a broader understanding of compliance. Specifically, a good deal of research indicates that self-regulatory motivations are activated when people believe that the law reflects their views about right and wrong and that it is therefore both a moral responsibility and even an obligation to conform to the law. Consequently, people who identify with legal authorities and imbue the legal system with legitimacy and morality behind it will voluntarily abide by laws and defer to authorities.²⁹ I will develop this position in more detail in the remainder of this presentation. I argue that we can motivate rule following in a different way, i.e. by focusing on these values.

Ever since Kurt Lewin's (1936) field theory, social psychologists have assumed that behavior is determined by two main forces. The first is the pressure of the situation or the environment, and the second includes the motives and perceptions that the person brings to the situation. In Lewin's famous equation, behavior is understood to be a function of the person and the environment: $B = f(P, E)$. An expanded conception of the person term includes the set of social and moral values that shape the individual's thoughts and feelings about what is ethical or normatively appropriate to do. I will focus on two such values: (a) commitment to the notion that if the rules are fair and legitimate, then they ought to be obeyed (moral value congruence), and (b) the conviction that following the rules of the

²⁹ Darley, Tyler, Bilz, 2003; Jost & Major, 2001; Tyler, 2006a; Tyler & Blader, 2000.

community is (in most cases) the morally appropriate thing to do (legitimacy).

From a social psychological perspective, the first step is to recognize that the legal system depends at least in part on the willingness of citizens to consent to the operation of legal authorities and to actively cooperate with them. Second, willing acceptance comes most quickly and completely to the extent that people view the law as (a) legitimate and (b) consistent with cherished moral values.

Legitimacy

Modern discussions of legitimacy are usually traced to the writings of Weber (1968) on authority and the social dynamics of authority.³⁰ Weber, like Machiavelli and others before him, argued that successful leaders and institutions use more than brute force to execute their will. More specifically, they strive to win the consent of the governed so that their commands will be voluntarily obeyed.³¹ As Kelman (1969) puts it: "It is essential to the effective functioning of the nation-state that the basic tenets of its ideology be widely accepted within the population ... This means that the average citizen is prepared to meet the expectations of the citizen role and to comply with the demands that the state makes upon him, even when this requires considerable personal sacrifice" (p. 278). Widespread voluntary cooperation with the state and the social system allows authorities to concentrate their resources most effectively on pursuing the long term goals of society. The authorities do not need to provide incentives or sanctions to all citizens to get them to support every rule or policy they enact.

Legitimacy, according to this general view, is a quality that is possessed by an authority, a law, or an institution that leads others to

³⁰ E.g., Zelditch, 2001.

³¹ Tyler, 2006a.

feel obligated to accept its directives. It is, in other words, "a quality attributed to a regime by a population".³² When people ascribe legitimacy to the system that governs them, they become willing subjects whose behavior is strongly influenced by official (and unofficial) doctrine. They also internalize a set of moral values that is consonant with the aims of the system, and – for better or for worse – they take on the ideological task of justifying the system and its particulars.³³

The roots of the modern discussion of legitimacy are usually traced to the important writings of Weber on authority and the social dynamics of authority.³⁴ Weber argues that the ability to issue commands that will be obeyed does not rest solely upon the possession and ability to use power. In addition, there are rules that people will voluntarily obey, and authorities whose directives will be voluntarily followed. Legitimacy, therefore, is a quality possessed by an authority, a law, or an institution that leads others to feel obligated to obey its decisions and directives. This feeling of responsibility reflects a willingness to suspend personal considerations of self-interest and to ignore personal moral values because a person thinks that an authority or a rule is entitled to determine appropriate behavior within a given situation or situations.

Kelman & Hamilton (1989) refer to legitimacy as "authorization" to reflect the idea that a person authorizes an authority to determine appropriate behavior within some situation, and then feels obligated to follow the directives or rules that authority establishes. As they indicate, the authorization of actions by authorities "seem[s] to carry automatic justification for them. Behaviorally, authorization obviates the necessity of making judgments or choices. Not only do normal moral principles become inoperative,

³² Merelman, 1966, p. 548.

³³ See also Jost & Major, 2001.

³⁴ Weber, 1968.

but – particularly when the actions are explicitly ordered – a different type of morality, linked to the duty to obey superior orders, tends to take over”.³⁵

One way to think about legitimacy is as a property of an institution. For example, studies of confidence in government ask people to rate the overall government, and its institutions and authorities. Studies of the legitimacy of legal authorities similarly ask people to evaluate their general feelings of responsibility and obligation to obey the law and legal authorities.³⁶ This focus on the importance of legitimacy reflects concern with the circumstances under which people follow the directives of social rules and social authorities. Legitimacy is important to the success of such authorities because they are enabled to gain public deference to a range of decisions by virtue of their social role. This deference is not unlimited, since legitimacy may exist within a certain sphere, but within that sphere, acceptance of the right of authorities to make decisions that ought to be accepted and obeyed is broad.³⁷

Legitimacy can also be the property of a person. In early policing, for example, the beat officer patrolled a particular area, and area in which he/she often lived. They developed personal relationships with the public – i.e. people knew them. So, they had legitimacy as individuals, and they build or undermined that legitimacy by the manner in which they exercised their authority. In modern police forces, which are rooted in police cars, the officer who steps out of a car to respond to a particular situation is generally someone that the people involved do not know. That officer has institutional legitimacy, marked by a uniform, a cap, a badge. Their authority comes from the authority of their office, not from anything about them as particular people. Ironically, as the general legitimacy of

³⁵ Kelman & Hamilton, 1989, p. 16.

³⁶ See Tyler, 2006a.

³⁷ Tyler, 2006b.

the police has declined, the police have moved toward styles of policing, for example, community policing that reestablish legitimacy at a personal level. In community policing officers get to know the people in their community. In so doing, they are seeking both to rebuild the legitimacy of the police and to establish personal legitimacy as police officers. Both types of legitimacy come into play when a police officer seeks to exercise authority in a given situation. In that situation both the affected parties and the people in the community, all of whom are in the immediate situation, are all parties to a decision whether to accept or to contest the authority of the officer at that moment and in that setting.

Similar issues have arisen in the case of the courts. A judge can put on their robes and walk into their court to deliver a judicial pronouncement. But, will the parties actually obey that order? Often the answer is no.³⁸ It is widespread noncompliance with judicial orders that encouraged the courts to focus increasingly on alternative dispute resolution approaches such as mediation. Those mechanisms have a proven track record of increasing acceptance. Why? They provide a particular authority, the mediator, with an opportunity to build legitimacy with the parties. The judge comes into the court with institutional legitimacy, but often lacks the time and temperament to work with the parties to build personal legitimacy. As a result, their ability to exercise authority depends upon institutional legitimacy, and such legitimacy has declined over the years. Of course, judges themselves can change their approach, and many are looking to research to provide a better understanding of how to manage disputes in ways that facilitate the acceptance of their rulings.³⁹

³⁸ Tyler, 2003.

³⁹ Tyler, 2006c.

Although the concept of legitimacy has not featured prominently in recent discussions of social regulation with respect to law-abiding behavior, there is a strong intellectual tradition that emphasizes the significance of developing and maintaining positive social values toward cultural, political, and legal authorities.⁴⁰ According to theories such as these, the smooth functioning of society depends on the existence of supportive attitudes and values among members of the population in general. Presumably, attitudes and values that support the social system begin to develop during childhood and adolescence as part of the process of political (and legal) socialization.⁴¹

The value of cultivating system legitimacy consists in its enabling the effective exercise of social authority. While authorities can exercise power directly through the promise of rewards or the threat of punishment, such approaches to deterrence are expensive, inefficient, and psychologically naive. They may be especially problematic during times of instability or crisis, when authorities need the support of the people at a time in which they lack control over resources. An organization or society whose governance is motivated only by incentives and sanctions is at risk of disintegrating during times of trouble or change. In contrast, if a system enjoys widespread legitimacy, authorities can appeal to members based upon their shared purposes and values, providing the system with much-needed stability. From this perspective, legitimacy is a highly desirable feature of social systems.⁴²

Underlying this generally positive view of the role of legitimacy and social values in motivating cooperation with the social system is the belief that there is a mutual benefit that comes from voluntarily accepting societal norms. According to this view, the rulers and the

ruled alike gain from having “a stable social and political order” that is helped by widespread shared beliefs that the system is legitimate and consistent with people’s moral values.⁴³ Clearly, legitimacy and stability facilitate regulation – the process whereby authorities seek to bring the behavior of individuals into line with system rules.

Legitimacy in particular has many appealing features as a possible basis for the rule of law. On its face it appears to be an all-purpose mechanism of social coordination, insofar as people feel obligated to obey whatever laws or decisions authorities make, within some realm of legitimacy. Much as studies of confidence and trust in government focus on people’s overall evaluations of the government, its institutions, and its authorities,⁴⁴ studies of “legal consciousness” focus on whether people have “trust and confidence” in the legal system, whether they think that the law works to help everyone, and how and when people have duties and obligations to legal institutions and authorities.⁴⁵

Moral values

Legitimacy is not the only social value upon which the legal system might potentially be based. A second social value is personal morality – the motivation to behave in accord with one’s sense of what is appropriate and right to do in a given situation. For example, people may think that using drugs is morally right or wrong, irrespective of whether drug use is illegal. These feelings about the morality of particular behaviors also shape people’s behavior, with people being less motivated to act in ways that they think are immoral irrespective of whether those behaviors are or are not legal. And, like

⁴⁰ Easton, 1965, 1975; Krislov et al., 1966; Melton, 1985; Parsons, 1967; Tapp and Levine, 1977.

⁴¹ E.g., Cohn and White, 1990; Niemi, 1973.

⁴² See also Tyler, 2006a, 2006b; Tyler and Huo, 2002.

⁴³ Sears, 2003, p. 322.

⁴⁴ Citrin & Muste, 1999.

⁴⁵ Ewick and Silbey, 1988; Finkel, 1995; Flanagan and Longmire, 1996; Hamilton and Sanders, 1992; Merry, 1990.

the social value of legitimacy, morality is internal and shapes actions distinct from consideration of being caught and punished for wrongdoing. What unites the study of legitimacy and morality? In both cases, the key is that people accept as their own feelings of responsibility and obligation for their actions in society.

The influence of moral values is based on the internalization of feelings of responsibility to follow principles of personal morality.⁴⁶ A core element of moral values is that people feel a personal responsibility to follow those values, and feel guilty when they fail to do so. Hence, moral values, once they exist, are self-regulatory in character, and those who have such values are personally motivated to bring their conduct into line with their moral standards.

The internalized sense of morality is central to the work of, among others, Freud, Weber, and Durkheim. Hoffman (1977) writes:

The legacy of both Sigmund Freud and Emile Durkheim is the agreement among social scientists that most people do not go through life viewing society's moral norms as external, coercively imposed pressures to which they must submit. Though the norms are initially external to the individual and often in conflict with [a person's] desires, the norms eventually become part of [a person's] internal motive system and guide [a person's] behavior even in the absence of external authority. Control by others is thus replaced by self control [through a process labeled internalization] (p. 85).

The idea is that internalized values become self-regulating, so that people accept and act on the basis of values that produce respect for societal institutions, authorities, and rules. Public standards are taken on as private values that are associated with a moral respon-

sibility to act in accordance with ethical judgments about what is right and wrong. Presumably, this occurs during childhood as part of the socialization process. Robinson and Darley (1995) argue that people's moral values form during childhood socialization, and are not easy to change later in their lives.

The significance of morality is illustrated by research on punishment. Studies demonstrate that people's views about appropriate sentencing decisions in criminal cases are driven by moral judgments about deservingness rather than by instrumental judgments concerning how to deter future criminal conduct.⁴⁷ People accept that a punishment is appropriate when it accords with their moral sense of what is appropriate given the level and type of wrong committed. More generally, research shows that people are more willing to comply with the law to the extent that they view it as consistent with their moral values.⁴⁸ As a consequence, an important question for the law is the degree to which it is congruent with public moral values. If people correctly understand the law, and if the law truly reflects moral standards of the community, then the internalized sense of morality acts as a force for law-abidingness.

The distinction between legitimacy and morality is that, in the case of morality, legal authorities gain support for particular laws or decisions when those laws or decisions are in accord with people's personal morality. Hence, the motivation to behave in ways that are moral does not lead to support of the rule of law when the public thinks that the law is inconsistent with their morality – when moral values and legal rules are congruent. To activate the motivation force of morality, legal authorities must be pursuing policies that are consistent with people's moral values.⁴⁹

⁴⁷ Carlsmith, Darley, and Robinson, 2002; Darley, Carlsmith, and Robinson, 2000.

⁴⁸ E.g., Robinson and Darley, 1995; Tyler, 2006a.

⁴⁹ Sunshine and Tyler, 2003b.

⁴⁶ See Robinson & Darley, 1995; Tyler & Darley, 2000.

Robinson and Darley (1995), for example, show gaps between law and public morality. To the extent that such gaps are widely known, they would undermine public compliance with the law. The law can enlist people's moral values as a motivational force supporting deference to the law by pursuing ends that people view as moral. They argue that the law is less likely to be able to call upon people's moral motivations to support the legal system when its values are viewed as discrepant from those of the public. Hence, the law can engage moral values when and if the law is consistent with the moral values held by the public.

Of course, morality and legitimacy can be in conflict. A conflict between legitimacy and morality can occur with mundane and everyday practices, as when the government seems to criminalize drug use or certain sexual practices without the support of public morality,⁵⁰ or it can involve dramatic and high-stakes conflicts, as when the government seeks to compel people to serve in wars they think are unjust, or to pay taxes to support policies they view as immoral. Unlike legitimacy, morality is not linked to the role of the authority and its independent roots in personal ethical values mean that, while morality usually supports following laws,⁵¹ the two internal forces do not always support one another.

Values and institutional design

A value-based perspective on human motivation suggests the importance of developing and sustaining a civic culture in which people abide by the law because they feel that it is morally appropriate/just and that legal authorities are legitimate and ought to be obeyed. For this model to work, society must create and maintain public values that are conducive to following justice norms. Political scientists refer to this set of values as a "reservoir of support"

⁵⁰ Darley, Tyler, & Bilz, 2003.

⁵¹ Tyler, 2006a.

for government and society.⁵² Although it may not always be easy for authorities to maintain high reservoir levels, a value-based model is consistent with a social psychological understanding of how authorities can effectively regulate citizen behavior, maintain social order, and promote an effective, well-functioning society by developing and maintaining a culture of supportive social values that will be internalized by the citizenry.

The value-based model outlined in this section avoids many of the pitfalls of the deterrence model. Specifically, it does not require extensive surveillance efforts, is more sophisticated concerning the genuine causes of human behavior, engages intrinsic (and not just extrinsic) motivation, and fosters a positive social climate based on a shared commitment to moral values rather than a negative social climate based on suspicion and distrust. But there is yet another important advantage of our value-based model to which I have only alluded thus far. To the extent that people are in fact internalizing appropriate moral values, deferring to legal authorities who implement fair procedures, and obeying laws that are truly just, then the model of human behavior sketched will lead not only to an efficient and well-ordered society but also to one that has a profoundly legitimate basis for regulating the behavior of its citizenry.

The crucial empirical question is whether or not values actually shape law related behavior. This issue is addressed in Tyler (2006a). That study involved interviews with random sample of the residents of the city of Chicago about their law related values and behaviors. The results indicated that compliance with everyday laws was shaped by three factors: risk of detection; legitimacy of legal authority; and the morality of the law. Of these factors risk was the least important. Legitimacy was five times as important as was risk, while morality was fifteen times as important.

⁵² Dahl, 1956.

This finding is typical of empirical findings in this area. Studies find that values shape rule following.⁵³ Second, they find that their influence is stronger than the effect of risk estimates. Subsequent research extends this finding beyond compliance and shows that cooperation with legal authorities is also shaped by legitimacy and moral value congruence.⁵⁴

Beyond general rule following, legitimacy also shapes deference to the particular decisions made by legal authorities, either directly⁵⁵ or by influencing judgments about the experience.⁵⁶ When people view the police as more legitimate, before they deal with them, they are more likely to accept the decisions that police officers make during a subsequent personal interaction.

A pyramid of regulation

These notions are congruent with the proposals of Ayres and Braithwaite (1992), who suggest that legal authorities should approach citizens by appealing to their social values. The idea is that if authorities are successful in joining legal rules and value-based motivations, it will be much easier to isolate the relatively small number of citizens who do not share the values of the community. This is a kind of social self-regulation that enhances the effectiveness of legal authorities by freeing them to pay attention to those problems or people that, for various reasons, are not amenable to self-regulation.⁵⁷ Self-regulation can occur based upon legitimacy, morality, and/or both.

The police and courts, as an example, depend very heavily upon the widespread voluntary compliance of most of the citizens most of

the time.⁵⁸ This compliance presumably allows authorities to focus their attention upon those individuals and groups whose behavior seems to be responsive only to threats of punishment. The legal system would be overwhelmed immediately if it were required to regulate the behavior of the majority of citizens solely through sanctioning or the threat of sanctioning.

The procedural justice approach seeks to activate morality through the fair exercise of authority. When people view the authorities as engaging in practices that the public views as being morally appropriate, that heightens their sense that legal authorities are behaving morally. In other words, one important set of moral values are concerned with how the police should exercise their authority, so the procedures by which the police act communicate to members of the public whether the police share their moral values.⁵⁹ For example, when the police engage in moral profiling, which people view as an unfair procedure, they diminish their moral authority by showing that they do not share the public's moral values about how the police should act.⁶⁰ Legal authorities, in other words, can demonstrate that they share public morality by acting in ways that are consistent with public views about how to fairly exercise authority – e.g. by using fair procedures to make decisions.

⁵³ Sunshine and Tyler, 2003a; Tyler, 2006a, 2006b; Tyler and Fagan, 2008.

⁵⁴ Sunshine and Tyler, 2005.

⁵⁵ Tyler and Huo, 2002.

⁵⁶ Tyler and Fagan, 2008.

⁵⁷ Ayres and Braithwaite, 1992.

⁵⁸ Tyler, 2006a.

⁵⁹ Sunshine & Tyler, 2003b.

⁶⁰ Tyler and Wakslak, 2004.

IV. PROCEDURAL FAIRNESS AS THE BASIS OF VALUE-BASED REGULATION

If legal authorities know that they can benefit from being viewed as legitimate and having their policies regarded as moral, they need clear suggestions about how they can facilitate such public views. One approach is via selection. People could be chosen, for example, based upon prior views about the legitimacy of legal authorities and/or the degree to which their moral values are consistent with the principles of the law.

In organizations it is possible to hire and retain people with supportive values. In communities, however, people are usually preexisting, and the ability of legal authorities to choose the community members that they want to police is limited. The primary tool for selection is reactive, with the legal system removing people who break rules from the community via jail and prison. The other approach is experiential. Here I am referring to the ability of legal authorities to shape public views through their policies and practices. This approach is based upon the argument that personal and indirect experience matters. Indirect experience occurs through the mass media or informal reports of the experiences of others – neighbors, family and friends.

A second key argument that I make is that legitimacy and the view that law is consistent with moral values can be built through procedural fairness. My suggestion is that the authorities can gain a great deal in terms of legitimacy and morality when they follow clear norms of procedural justice, including impartiality, transparency, and respect for human dignity.⁶¹ Thus, implementing fair

⁶¹ Tyler, 2001b.

procedures as well as providing favorable and/or fair outcomes can provide a solid basis for establishing system legitimacy.

The legitimacy of authorities is an especially promising basis for the rule of law because research suggests that it is not yoked to agreement with the decisions rendered by legal authorities. If people view as legitimate only those authorities who make decisions with which they agree, it would be difficult for legal authorities to maintain their legitimacy, insofar as they are required to make unpopular decisions and to deliver unfavorable outcomes. In times of war, for example, people must be willing to be drafted and serve in the armed forces. In times of scarcity they must accept diminished outcomes.

Moral value congruence is less obviously valuable as a basis for the rule of law, since moral values could also conflict with the law. However, I will suggest that people's views about the morality of rules are responsive to procedural justice. If legal authorities make decisions and implement rules following fair procedures, I will suggest that people are more likely to view the law as consistent with their own moral values.

Fortunately, from the perspective of legal authorities, studies suggest that both ascriptions of legitimacy and judgments about moral value congruence are tied to the perceived fairness of the procedures used by authorities to make decisions rather than to the favorability or fairness of outcomes *per se*.⁶² These results suggest that legal authorities may be able to maintain their legitimacy in the long term by making decisions in an ethically defensible manner.

Tyler and Huo (2002) studied the basis of deference to decisions made by legal authorities. They based their analysis on a sample of

⁶² Tyler, 2006a, Tyler, Boeckmann, Smith, and Huo, 1997; Tyler and Smith, 1997.

the residents of Los Angeles and Oakland, interviewed over the telephone about recent personal experiences with legal authorities. The results of the study suggest that the primary reason that people deal with legal authorities is to ask for their help with problems. The secondary reason is that they are regulated by authorities, i.e. stopped by the police or called into court. Irrespective of which reason leads to personal experience with legal authorities, people report that their outcomes are negative about 30% of the time.

Why do people accept the decisions made by legal authorities? The results are similar to those outlined in the earlier analysis of the antecedents of compliance. The primary factor shaping decision acceptance was the procedural justice of the process through which a decision was reached. This factor is approximately seven times as important as either the favorability or the fairness of the outcome. Further, similar findings emerge when we consider why people have positive or negative views about the authorities involved. Again, procedural justice is the key antecedent.

Beyond the immediate situation, procedural justice in particular experiences with legal authorities shapes views about the overall legitimacy of the law and the legal system. In fact, studies indicate that people's view that the legal system is legitimate increases following a negative outcome, as long as people experience the procedures used by authorities as being fair.⁶³

Finally, in studies of the general population, people are found to regard the police as legitimate if they believe that the police exercise their authority through fair and impartial means.⁶⁴ Indeed, the evidence suggests that procedural justice judgments are more central to judgments of legitimacy than are such factors as the perceived effectiveness of the police in combating crime. To the extent

⁶³ Tyler and Fagan, 2008.

⁶⁴ Sunshine & Tyler, 2003a; Tyler, 2001a.

that people perceive law enforcement officials as legitimate, they are significantly more willing to comply with the law in general.⁶⁵

Perhaps most importantly, procedural justice cues play an especially important role in securing compliance over time.⁶⁶ It is by now very clear that people's reactions to law and legal authorities are heavily influenced by their assessments of the fairness of legal procedures.

The procedural basis of legitimacy is especially strong with respect to public opinion concerning political and legal institutions. Studies of the Presidency,⁶⁷ the legislature,⁶⁸ and the Supreme Court⁶⁹ all suggest that when citizens are evaluating government institutions they focus primarily on the fairness of the procedures by which the institutions makes policies and implements its decisions. Research on work organizations also suggests that perceived legitimacy has a strong procedural basis.⁷⁰

The procedural basis of legitimacy on an institutional level is consistent with the argument that support for the rules of governance (i.e., procedures and institutions) is theoretically and empirically distinguishable from support for particular individuals or their policies. Studies suggest that reactions to individual leaders and policies are more strongly linked to outcome desirability than are reactions to institutions.⁷¹ In general, however, it is support for the rules of governmental operation – what Easton⁷² refers to as “dif-

fuse system support” – that is seen as crucial to long-term governmental stability.

My thesis is that the most reliable way of attaining legitimacy and maintaining diffuse system support for legal institutions and authorities is by establishing and protecting procedural safeguards. Indeed, the need for procedural safeguards is one of the strongest arguments for the Constitutional separation of executive, representative, and judicial branches of government. To the extent that procedures for insuring genuine fairness are compromised, the system will begin to lose legitimacy and – over time – fail to inspire the kind of cooperation and deference that is often taken for granted during periods of stability.

Interestingly, recent studies suggest that it is not only legitimacy that is enhanced by procedural fairness.⁷³ When people believe that authority is being exercised via fair procedures, they are more likely to view the policies of the group as being consistent with their moral values. Hence, both of the social values described are encouraged by the use of fair procedures.

What is particularly striking about procedural justice judgments is that they shape the reactions of those who are on the losing side of cases. If the person who does not receive an outcome that they think is favorable or fair feels that the outcome was arrived at in a fair way, they are more likely to accept it. And, studies conducted over time show that people continue to adhere to fairly arrived at decisions over time, suggesting that their acceptance of those decisions is genuine and not simply the result of fear or coercion. Further, people who experience procedural justice in court rate the courts and court personnel more favorably, indicating higher levels of trust and confidence in the courts and the court system.

⁷³ Tyler and Blader, 2005.

⁶⁵ Sunshine & Tyler, 2003a; Tyler, 2006a.

⁶⁶ Paternoster, Brame, Bachman, and Sherman, 1997; Pruitt, Peirce, McGillicuddy, Welton, and Castrianno, 1993.

⁶⁷ Tyler, Rasinski, and McGraw, 1985.

⁶⁸ Hibbing and Theiss-Morse, 1995, 2002.

⁶⁹ Tyler and Mitchell, 1994.

⁷⁰ Elsbach, 2001; Tyler and Blader, 2000, 2005.

⁷¹ Rasinski, Tyler, Fridkin, 1985.

⁷² Easton, 1965, p. 444.

What makes a procedure fair?

From an organizational perspective, procedural justice judgments are most useful to managers if those within the organization distinguish them from outcome judgments, and rely on distinct procedural justice assessments when evaluating the actions of management. Based upon research in organizational settings, it is expected that views about the fairness of procedures will, in fact, be heavily influenced by distinct judgments about procedural fairness that are not linked to the favorability or fairness of the outcomes that results from those procedures.⁷⁴ These include, for example, whether the procedures allow input into evaluations; whether they require that objective information be used; whether they try to control the influence of bias; etc.⁷⁵ Recent research draws upon the four component model of procedural justice and tests the importance of four potential procedural justice criteria.⁷⁶

The four component model of procedural justice identifies four procedural components, or evaluations, each of which contributes to overall procedural justice judgments. Those components are defined by: 1) two distinct aspects of organizational processes, and 2) two sources of information about procedures. I will discuss the influence of each of these four components on definitions of procedural justice.

One of the aspects of organizational processes considered in the model refers to the organization's decision-making procedures. Specifically, the model considers evaluations of the *quality of decision making* in their organization. Consideration of these evaluations links to the elements of legal procedures and emphasizes is-

sues of decision-maker neutrality, the objectivity and factuality of decision making, and the consistency of rule application.⁷⁷

There is a distinct, but potentially equally important issue involving *the quality of people's treatment by organizational authorities*. Quality of interpersonal treatment issues constitutes the second aspect of organizational processes. Quality of treatment involves treatment with politeness and dignity, concern for people's rights, and other aspects of procedures that are not directly linked to the decisions being made through the procedure.

Each of these two aspects of procedures (quality of decision-making, quality of treatment) can potentially be linked to two sources of procedure. One source of information involves the *rules of the organization*. The formal rules and structures of the organization, as well as statements of organizational values, communicate information about organizational procedures. For example, organizations vary in terms of whether they have formal grievance procedures that allow people to voice complaints. They also differ in their statements of values ("vision statements" or "formal laws and rules"). With law, for example, the formal laws reflect values, while work organizations have more informal vision statements.

The other source of information is a person's experience with authorities. While they are constrained by formal institutions and procedures, organizational authorities, police officers, judges, managers, teachers, mediators, etc., typically have considerable discretion concerning the manner in which they implement decision making procedures and how they make decisions regarding issues that have no formal procedures associated with them. Further, they have a great deal of flexibility about how they treat those with whom they deal. The same decision-making procedure can be

⁷⁴ Tyler & Blader, 2000.

⁷⁵ Lind & Tyler, 1988; Tyler & Lind, 1992.

⁷⁶ See Blader & Tyler, 2003a, 2003b.

⁷⁷ Lind & Tyler, 1988; Tyler & Lind, 1992.

implemented in a way that emphasizes the dignity of those involved, or employees can be treated rudely or dismissively. A similar situation is found with the law. There are formal laws and rules constraining the conduct of police officers and judges. However, those authorities typically have considerable latitude in the manner in which they exercise their authority within the framework of those rules.

The four component model argues that each of the four components defined by these two dimensions has an important role in the definition of the fairness of procedures. While the four component model provides a guideline for the types of evaluations that compose overall evaluations of an organization's procedural justice, the essential argument advanced here is that the nature of those evaluations is non-instrumental and non-material. Neither of the aspects of organizational processes emphasized in this model of the antecedents of procedural justice (quality of decision-making, quality of interpersonal treatment) is directly linked to evaluations of the favorability or fairness of the outcomes people receive.

This psychological model of procedural justice suggests that formal and informal procedures will typically complement one another. However, it is important to acknowledge a sociological tradition which suggests that the interpersonal connections made within work groups may foster the development of separate norms and ways of doing business that facilitate rule breaking. Bourdieu⁷⁸ highlights the possibility that workgroups may create the organizational dynamics that support rule breaking and corruption by creating separate social realities within which such practices are regarded as acceptable.

⁷⁸ Wacquant, 2005.

Tyler and Huo (2002) considered the importance of these factors in shaping judgments about the overall justice in personal experiences with legal authorities. They found that both the quality of decision making and the quality of interpersonal treatment are more important than outcome favorability in shaping judgments about the procedural justice of the experience. In other words, people's justice judgments are not strongly linked to their outcomes.

Procedural justice and the exercise of legal authority

Now that I have laid out the basic tenets of a value-based model of legitimacy and morality, which emphasizes (a) system legitimacy/moral value congruence as the basis of social influence and motivation to comply with the law and (b) procedural fairness as the basis of system legitimacy, we are in a position to consider some further legal implications of the model.

I will focus on four areas of application in particular: strategies for regulation; recidivism; corporate wrongdoing; and misconduct by agents of social control. In each of these cases, the model being outlined makes different recommendations from those that are commonly derived from the deterrence model, which currently dominates scholarly and professional thinking about both criminal justice and business ethics.

V. STRATEGIES FOR REGULATION

We can apply the principles outlined to specific practices used by legal authorities to enforce the law. Such strategies involve the way that the police or the courts implement the law. Also the law itself is often not flexible, the authorities who implement it are given tremendous discretion about when and how to enforce laws and legal regulations.

Let me first give an example using a currently controversial policing practice – racial profiling. During the past several years racial profiling issues have been central to public discussions of police-community relations. President Bush has labeled racially based profiling “wrong” and argued that it must end. Both Congress and a number of states have considered or passed laws designed to lessen it. More than 80 percent of Americans have said that they “disapprove” of it.⁷⁹ It has been blamed for a variety of ills, from increasing friction between the police and minority communities to overall decreased confidence in and cooperation with the police.

The issue of racial profiling – that is, situations in which legal authorities may be acting, at least in part, based on the race of a person – can be considered from a number of perspectives. Legal scholarship focuses on whether and when profiling based on ascribed characteristics such as race, gender, or age is or ought to be illegal.⁸⁰ Criminologists have been interested in determining how often profiling based on ascribed characteristics actually occurs.⁸¹ Police institutions have focused on profiling as a reflection of possible racism among legal authorities that leads to “bias-based” po-

⁷⁹ Gallup poll, December, 1999.

⁸⁰ Harris, 1999; Kadish, 1997; Knowles and Persico, 2001; Thompson, 1999.

⁸¹ Lamberth, 1998; Rudovsky, 2001.

licing.⁸² Although each of these perspectives differs in their specific focus, they all attempt to study the actual behavior of legal authorities.

The analysis I will discuss here approaches profiling from a different perspective, looking at the attributions the public makes for the behavior of legal authorities. In doing so, we distinguish between profiling attributions, in which a person attributes the behavior of the police to the ascribed characteristics of the person they are dealing with, and behavioral attributions, in which a person attributes police behavior to actions of that person. In other words, this analysis focuses on the subjective experience of feeling profiled rather than the objective one of being profiled. I do this because I believe that the experience of receiving police attention based on one's race – regardless of whether profiling has occurred – may be responsible for many of the negative associations of racial profiling.

Observational studies on the behavior of legal authorities suggest that those authorities seldom make overt statements that link their behavior to racial profiling. They do not say, for example, "I stopped you because you are black".⁸³ When they do provide reasons or explanations for their actions the reasons legitimize the actions, as when the police say that the person "fits the description of someone who is wanted for a crime." Thus those stopped by the police must infer why they were stopped, often based on unclear, ambiguous cues. From this perspective, I view the subjective experience of being profiled as an aspect of people's more general desire to understand events.

This work, therefore, asks the following two questions. First: What are the consequences of someone making a profiling attribution to explain police behavior? Does the inference of profiling, regardless

of its validity, impact support for the police? That argument is supported by a Weitzer and Tuch study (2002) demonstrating that when people believe that profiling is widespread and/or that they have been profiled, their support for the police fades. This is consistent with the more general finding that highly visible incidents of police misconduct toward minorities weaken support for the police.⁸⁴ The first goal is thus to demonstrate that subjective assessments of profiling are significant in predicting the public's support for the police on a variety of measures.

The second question addressed is: What factors shape inferences about whether profiling has occurred – i.e., what variables are people relying on when they make judgments about police behavior? Research suggests that minorities are more likely than whites to say that the police had no legitimate reason for stopping them.⁸⁵ Are there factors beyond race that predict whether people – both minorities and nonminorities – feel profiled?

One suggestion is that people's belief in the fairness of how the police exercise their authority – procedural justice – might affect whether they make profiling attributions, because a profiling attribution is a judgment that the police are being unjust. But what determines whether people will find the police fair? The procedural justice model that has been outlined in this essay argues that people judge fairness based on several process-based criteria.⁸⁶ Fair procedures have been argued to have two components: (1) quality of decision-making – opportunities for participation; perceived neutrality and consistency; (2) quality of treatment – being treated with dignity and respect; having one's rights acknowledged; and believing that the authorities are acting out of benevolence and a sincere desire to be fair. I predict that assessments of racial profil-

⁸² Fridell, Lunney, Diamond and Kubu, 2001.

⁸³ Sherman, 1999.

⁸⁴ Weitzer, 2002.

⁸⁵ Lundman and Kaufman, 2003.

⁸⁶ Tyler and Huo, 2002.

ing, like other police actions, will be associated with judgments of police procedural fairness. I will outline several tests of this argument.⁸⁷

Policing strategies

I will first consider racial profiling in the context of people's personal experiences with the police and the judgments they make about those experiences using several samples of people with recent experiences being stopped by the police. These studies were conducted in a variety of American locations, including New York and California.

The extent to which people attribute being stopped by the police to profiling factors and the effect of this attribution influences two aspects of public support for the police: willingness to accept the decisions the police make and satisfaction with the police. I will also treat the attributions of profiling as a dependent variable and examine possible contributing factors, including those related to procedural justice (quality of treatment, quality of decision-making) and distributive justice (fairness of outcome, objective and subjective favorability of outcome), as well as a number of demographic variables.

An examination of personal experiences indicates that attributions of profiling lead to a less willing acceptance of police decisions and to reduced satisfaction with the police. Further, it shows that police behavior shapes the attributions people make. In particular, the procedural justice of the police shapes people's judgments about police actions. The findings strongly support this perspective. Both those who believe that the police are neutral and those who experience high quality interpersonal treatment – i.e., politeness, respect, and the acknowledgment of their rights – are also less likely to feel

⁸⁷ For details see Tyler and Wakslak, 2004.

that they have been profiled. Further, these same factors influence decision acceptance.

Interestingly, once the various factors in the model have been incorporated, there is no independent direct influence of ethnicity, age, or gender on acceptance of police decisions. This finding is consistent with Tyler and Huo's argument (2002) that ethnic group differences in police-related behavior can be explained by a psychological model. This analysis brings in an additional issue that Tyler and Huo (2002) did not address, the question of racial profiling. However, when this is incorporated into an overall psychological model, no direct influences of ethnicity on willingness to accept police decisions are found.

Further, public views about the general prevalence of profiling are found to shape judgments of police legitimacy as well as the willingness to cooperate with the police. And, as in the case of personal experience, judgments about both the neutrality of the police and the quality of their interpersonal treatment of members of the public were linked to evaluations of the prevalence of profiling. Hence, if the police were procedurally just in their policies and practices, they were viewed as engaging in less profiling, were judged to be more legitimate as authorities, and received higher levels of cooperation from the public.

The results of the studies presented suggest that people react negatively to attributions of profiling, regardless of whether they have experienced profiling or believe that profiling generally occurs in their neighborhood and city. These findings replicate the finding of prior studies⁸⁸ that people's inferences about the motives underlying police behavior shape their support for the police. This is true

⁸⁸ See Weitzer and Tuch, 2002.

both in personal experiences with and in general evaluations of the police.

These findings suggest that there are clear policing strategies that effectively minimize the likelihood of profiling attributions. In particular, if people are treated fairly it is less likely that they will think the police guilty of profiling. When people indicate that they have experienced fairness from the police and/or when they indicate that the police are generally fair in dealing with their community, they are less likely to infer that profiling occurs. Hence, the police can manage their relationships with the communities they serve in through the manner in which they treat those they encounter.

The findings are especially striking given the unique nature of being stopped by police. The situation is one in which the criterion used to decide to stop someone may be unclear and in which the person being stopped has very little control. Additionally, it is an interaction that has been publicized as one tinged with bias, so people presumably enter into the interaction with their identity concerns highly salient. There has been much media attention in the past number of years about incidents of racial profiling in particular,⁸⁹ and tension riddled police-minority relations in general.⁹⁰ Given the current dynamic between the police and minorities, I would imagine a profiling attribution is particularly easy for people in the minority community to make.

Nonetheless, two aspects of procedural fairness – quality of decision-making and quality of treatment – were found to significantly affect the inferences people make about their interactions with the police. The findings highlight the value of transparency, that is, of making decisions in ways that make clear that authorities are neutral. The finding that people are less likely to infer that they have

⁸⁹ Harris, 1999; Knowles & Persico, 2001.

⁹⁰ Fridell, Lunnery, Diamond, Kubu, 2001.

been profiled when they are treated with politeness and respect by the police is especially interesting. The quality of interpersonal treatment is not necessarily an indicator of the manner in which police make decisions. We can imagine an officer who is not a neutral decision-maker, but still treats people with dignity and respect. At the same time we can imagine an officer who is a neutral decision-maker, but treats people without dignity and respect. Yet people do not treat these two issues as distinct and are more likely to say that they have been profiled when they are treated without respect.

The process-based model of regulation⁹¹ advocates an environment of fairness that incorporates all these elements of procedural justice. The argument made is essentially that underlying this essay. The use of fair procedures in the exercise of legal authority builds legitimacy and perceived moral value congruence. These values, in turn, encourage both voluntary deference to decisions and voluntary support for the law.

Along this line of thinking, Stuntz (2002) argues that in order to effectively deal with racial distrust of the police in the minority community it is important to regulate not only the selection of the people whom the police stop, but also the manner in which they conduct stops as well. According to his argument, this perspective may also offer one way of dealing with the complex issue of profiling in a post 9-11 world. Many maintain that suddenly the normative question of profiling is a lot less clear. Should all profiling, including that of potential terrorists, be disallowed?

Stuntz (2002) argues that in the type of situation faced post 9-11, in which it is unclear whether prohibiting profiling is an appropriate thing to do, we should focus on the manner in which people are stopped, which is a large cause of the harm associated with profil-

⁹¹ Tyler and Huo, 2002.

ing. Regulating the manner of stops made by the police is a way to limit the harm associated with profiling independent of whether one believes actual profiling should be prohibited under all circumstances.

Of course, I am not advocating that the police simply treat people fairly, and not take any actions to reduce profiling itself. Instead, my point is that there are some situations, like combating terrorism, in which profiling may ultimately be found to be both socially valuable and allowable under the law, and in which approaching the situation from a psychological perspective may be especially advantageous in reducing public dissatisfaction about profiling. In other words, if we are going to pursue such a strategy, how can we do so in the best way.

The procedural justice findings point to a clear strategy within which the police can work to create and sustain the trust and confidence of minority group members. While the findings outlined are not confined to minority group members, it is the members of that group that have been of greatest concern to legal authorities, since they have been consistently found to be the most disaffected and defiant members of our society. It is especially striking, therefore, that most of the core findings outlined, as was true of the findings of Tyler and Huo (2002), are applicable to both the majority and minority population.

One area that calls for further work is an attempt to identify particular behaviors that would allow the police to tap into the general ideas outlined. It is good to speak of “quality of decision making” or “quality of interpersonal treatment,” but what seems to us to be a necessary next step is work that identifies exactly what those terms mean in the context of police-citizen interactions. This would allow us to develop specific training programs that could teach the

police the most effective methods of interacting with the public, putting the theoretical ideas of process-based regulation into practice.

This discussion of profiling further makes clear that there are both empirical and normative standards for judging legal practices. There are normative standards of police conduct that are rooted in constitutional guarantees, statutory rules of conduct, and professional standards. The social science perspective, in contrast, focuses on the impact of police actions on the feelings and actions of the public. This research examines how the behavior of police officers and judges either enhances or undermines both the immediate acceptance of their decisions and their long-term legitimacy. Such a subjective focus centers on public reactions to the behavior of the police.

To give a concrete example, consider the broader case of aggressive policing actions. The police may obtain confessions of guilt from suspects, innocent or guilty, by applying social pressure, psychological “torture”, and even physical abuse. On the streets, they may stop and question suspicious people, searching them for weapons and requiring identification. One way to evaluate the appropriateness of such conduct is in terms of its impact on crime – the deterrence perspective. From this instrumental perspective, the value of aggressive policing activities is evaluated by considering the impact of such actions on the rate of crime (i.e., the ends justify the means). If the police can in fact lower crime by aggressive policing, then aggressive policing may be judged to be an appropriate and valuable police procedure.

The courts have provided some support for this perspective on policing activities by evaluating the use of the profiles that guide police intrusions into people’s lives by their effectiveness in identify-

ing people who are actually breaking the law.⁹² When, for example, the Supreme Court, evaluates the acceptability of the use of the “hijacker” profile, or the “drug courier” profile, they specifically note evidence about the number of guilty people identified by use of the profile, balanced against the number of innocent people stopped and questioned.

A normative perspective, in contrast, evaluates police actions against a standard of “appropriate police conduct”. Normative standards indicate that the police should not coerce people, irrespective of whether it helps to get criminals off the street, and they should not violate people’s rights in street stops, even if such stops lower the rate of crime. Finally, the social science perspective evaluates police actions against a background of public reactions. This perspective suggests that police behavior should be evaluated against the standards of public ethics and morality. An example of such an approach is provided by Slobogin⁹³ who evaluates the intrusiveness of law enforcement searches and seizures using public ratings of “intrusiveness”. Slobogin (1991) argues that standards of acceptable police behavior should be crafted with reference to the role of police activity in shaping public views about the legitimacy of the police, the courts, and the law. More generally, studies find that people evaluate the actions of authorities against standards of ethicality, i.e. against the background of prevailing standards of ethical behavior.⁹⁴

The courts

Tyler and Huo (2002) found that, in terms of frequency, people’s primary personal contact with legal authorities was with the police. However, it is also important to consider the courts, since the is-

ssues that bring people into courts are often more important and contentious than those that lead to interactions with the police. Tyler (2001c) explores the factors underlying public trust and confidence in the courts using data from several survey based studies of the courts.

The studies first look at the general population, rather than focusing on people with personal experiences with the courts. Further, people are asked about their overall evaluations of legal authorities, rather than about their willingness to accept particular decisions. The study contrasts the influence of performance evaluations, i.e. judgments about whether the police are effectively controlling crime, to judgments about the fairness of police treatment of citizens. It compares their importance as antecedents to confidence in the police.

The findings of the surveys reviewed by Tyler (2001c) suggest that people consider both the effectiveness of court performance, i.e. issues such as delay and cost, and the procedural fairness of the authority when evaluating the courts. The major factor, however, is consistently found to be the fairness of the manner in which the courts are believed to treat citizens when exercising their authority. When issues such as competence and other performance measures are considered, their importance is secondary.

In one study, a national survey of 1,826 people’s views about local and state courts the primary source of public discontent with the courts is the judgment that people receive poor quality interpersonal treatment from the courts, rather than that court performance is of poor quality. This includes whether the courts protect people’s rights; honesty among decision-makers; the willingness of judges to explain and justify their decisions; and the helpfulness and courtesy of court personnel.

⁹² See Monahan and Walker, 1994.

⁹³ Slobogin, 1991; Slobogin and Schumacher, 1993.

⁹⁴ Leventhal, 1980.

More recently a similar study of experiences in court was conducted in California.⁹⁵ This study involved interviews with over 2,400 residents of California. This study also found that the procedural fairness of the courts was the primary factor shaping confidence in the court system. The elements of procedural justice that were found to matter were those already outlined: honest and impartial decision makers, and decisions based on facts and consistent application of rules; opportunities to express one's views; treatment with dignity and respect; and having decision makers who are benevolent and caring.

Designing regulatory strategies

Evidence suggests that police innovations in the management of police services have contributed to the widespread decline in crime reported in major American cities during recent decades. Further, there are indicators of increasing professionalism in policing, including declining rates of complaints against the police and lower levels of excessive police use of force against community residents. However, studies of the public and public views about and cooperation with the police suggest that the public's reactions to the police are again only loosely linked to police effectiveness in fighting crime. These findings suggest that the police performance is an insufficient basis for gaining the cooperation of the public.

How can the police encourage public cooperation and support? A legitimacy based strategy of policing increases cooperation with the law by drawing on people's feelings of responsibility and obligation. The advantage of such a strategy lies in its ability to facilitate voluntary cooperation. To the degree that cooperation is motivated by personal values, it is self-regulatory, and does not depend upon the ability of the authorities to effectively deploy incentives of sanc-

⁹⁵ Rottman, 2005.

tions to secure desired public behavior. In such a "law abiding" society only minimal levels of societal resources are needed to maintain social order and those resources can be redirected toward meeting other needs.⁹⁶ Further, such voluntary deference is more reliable than instrumentally motivated compliance because it does not vary as a function of the circumstances or situation involved. Driving up to a stop sign on a deserted road at night, internal values motivate a person to stop, even when the possibility of punishment for law breaking behavior is minimal.

These findings support the basic premise of legitimacy theories. People are more willing to cooperate with legal authorities when they believe that those authorities are legitimate. This includes both deferring to their decisions during personal encounters and generally obeying legal rules in their everyday lives.

Legitimacy based policing has clear advantages for the police and the community. When people act based upon their feelings of obligation and responsibility, they are engaging in self-regulatory behavior. Society and social authorities benefit from the occurrence of such behavior because it does not depend upon the maintenance of a credible system of deterrence or upon the quality of police performance. Studies suggest that the maintenance of such a system is always costly and inefficient, and in times of financial difficulty or crisis, when public cooperation is most clearly needed, this poses special difficulties for authorities.

The distinction between risk/gain estimates and legitimacy as antecedents of behavior highlights the possibility of two types of legal culture. The first is a culture that builds public compliance on the basis of people's concerns about the possibility of being caught and punished for wrongdoing. Such a deterrence-based society depends

⁹⁶ Tyler and Darley, 2000.

upon the ability of legal authorities to create and maintain a credible threat of punishment for wrongdoing. The studies outlined demonstrate that, while deterrence influences law-related behavior, the social context of democratic societies makes it difficult for authorities to engage in the levels of surveillance needed to sustain a viable legal system simply based upon deterrence.

The important role played by legitimacy in shaping people's law-related behavior indicates the possibility of creating a law abiding society in which citizens have the internal values that lead to voluntary deference to the law and to the decisions of legal authorities. Such a society is based upon the willing consent and cooperation of citizens. That cooperation develops from people's own feelings about appropriate social behavior, and is not linked to the risks of apprehension and punishment that people estimate to exist in their social environment. Tyler (2001a) refers to such a society as a law-abiding society. The studies outlined make clear that such a society is possible in the sense that, if people think authorities are legitimate, they are more likely to obey them.

A law-abiding society cannot be created overnight through changes in the allocation of resources within government agencies, changes that would alter the expected gains and/or risks associated with compliance. It depends upon the socialization of appropriate social and moral values among children and the maintenance of those values among adults. Evidence suggests that a core element to the creation and maintenance of such social values is the judgment that legal authorities exercise their authority following fair procedures. This is true both during personal experiences with the police and the courts, where people are found to be more willing to accept decisions that are fairly made, and in general evaluations of the police, where people are found to comply with the law and support the police as an institution when they think that the police generally exercise authority fairly.

Although the study of legitimacy has not been central to recent discussions of strategies of social regulation, during earlier eras there was a strong emphasis on the importance of developing and maintaining positive social values toward political, legal, and social authorities.⁹⁷ This earlier focus on developing positive social values led to a number of studies of childhood socialization, since evidence suggests that the roots of social values lie in childhood experiences.⁹⁸ This view of social regulation is more consistent with the early work of Weber because it views society as depending on the widespread existence of supportive attitudes and values among the members of the population, supportive attitudes and values that develop during political and legal socialization.

In addition, a number of recent studies within the field of legal studies have recognized the importance of exploring legal consciousness.⁹⁹ These various studies focus on the broad question of how people view the law and the legal system – whether they have “trust and confidence” in legal authorities, whether they think the law works to help everyone, and when and where people have responsibilities and obligations to law and legal institutions. While not necessarily directly focused upon legitimacy, these studies recognize the importance of understanding public views about social responsibility and obligation to society, its institutions, and its authorities.

To enact such a strategy legal authorities need to refrain from actions such as racial profiling that undermine legitimacy and engage in practices such as community policing that enhance it. In other words, these findings and the model they support has implications

⁹⁷ Easton, 1965, 1975; Parsons, 1967; Krislov, et al, 1966; Melton, 1985; Tapp and Levine, 1977.

⁹⁸ Cohn and White, 1990; Greenstein, 1965; Hyman, 1959; Merelman, 1966; Niemi, 1973.

⁹⁹ Ewick and Silbey, 1988; Finkel, 1995; Hamilton and Sanders, 1992; Merry, 1990; Flanagan & Longmire, 1996.

for strategies of policing and for the approaches used by the courts to manage disputes. In both cases, they suggest the importance of emphasizing procedural justice at all stages of contact between the authorities and members of the public.

Many of the ideas outlined here are not only implications of a procedural justice or restorative justice approach to policing they are also part of the community policing and problem oriented policing approaches to policing. Those approaches emphasize police efforts to move beyond reacting to already committed crimes to making efforts to proactively work with communities to solve community problems.

Studies suggest that people value having the police talk to citizens and cooperate with citizens to solve community problems.¹⁰⁰ They support more bike and pedestrian patrols because they “like to perceive the police as friends and helpers and they would support endeavors to improve the work of the police force much in the sense of what community and problem oriented policing propose”.¹⁰¹ Similarly, a study of public complaints about the police showed that the two primary reasons for complaining were “rude, arrogant, unfriendly, over-casual treatment (38%)” and “unreasonable, unfair behavior (46%)”.¹⁰²

These findings suggest that people would like to improve the relationship between citizens and the police, a core concern of problem oriented and community policing. In fact Weitekamp, Kerner, and Meier (1996) propose a restorative problem solving police prevention program that views reconciliation between victims, the community as a whole, and perpetrators as a key goal. They argue that four groups – the police, the community, the offender, and the vic-

¹⁰⁰ Sunshine & Tyler, 2003a.

¹⁰¹ Weitekamp, Kerner, & Meier, 1996, p. 16.

¹⁰² See Skogan, 1994.

tim – should be involved in efforts to reconcile following wrongdoing. All of these groups should be jointly concerned to make their community safer, reduce fear, prevent future crime, improve the quality of life, and increase interpersonal harmony among the people in communities.

The potential value of fair treatment is illustrated in a study by Tyler, Casper and Fisher (1989). That study examined the manner in which having one’s felony case disposed in the courts shapes views about the legitimacy of the law. It focused upon the procedures for disposing of criminal cases, which means the informal procedure of plea bargaining in almost all cases, with a few formal trials.

People charged with felonies were interviewed both prior to and following the disposition of their case (primarily via plea bargaining). The study showed that the only factor that led to changes in views about the legitimacy of the system was procedural justice. Neither the actual length of one’s sentence nor judgments about sentence fairness shaped views about law and the legal system. Further, the elements of procedural justice that shaped reactions to the experience included both treatment by the police and by legal authorities, including their own lawyers. So, all elements of the general system played a role in creating a judgment of procedural fairness, and that judgment then shaped the impact of the personal experience on allegiance to law and the legal system. Given that those involved were primarily young, minority, males, whose initial allegiance to the law was weak, these findings provide a strong illustration of the potential of procedural justice to create legitimacy.

Tyler and Huo (2002) drew very similar conclusions from their study of the personal experience that young, minority males had with the police and courts in everyday life. They found that decision acceptance during personal encounters with legal authorities was primarily shaped by procedural justice. Interestingly, within this

high risk group the role of interpersonal respect was found to be especially strong, with people reacting negatively to signs of disrespect and lack of courtesy from legal authorities. Hence, similar findings emerge when the concern is shaping views about the legitimacy of the law and when it is decision acceptance in the immediate situation. In either case procedural justice is the key.

VI. RECIDIVISM

In the last several decades America could perhaps best be characterized as a highly “punitive” society.¹⁰³ The focus of public attention has been on the need to punish rule-breakers and support has been high for harsh punishments for a wide variety of crimes, with punishments including the death penalty and life in prison. The general tenor of recent times is captured by the case of support for the death penalty. During the 1960’s, a majority of adult Americans favored ending the death penalty, while public opinion polls during the 1980’s-1990’s typically found that 80% or more of those interviewed favored the death penalty.¹⁰⁴ The focus of public discussion has been, in this and many other ways, on the view that the legal system is too lenient and that there need to be harsher ways to punish those who commit crimes.

These punitive aspects of American culture are striking because they have become stronger during recent decades. A person looking at American society in the 1960’s might have projected a future of declining punishment and increasing efforts at rehabilitation and reintegration for offenders.¹⁰⁵ That is, in fact, the direction taken by much of Europe. However, the United States has not moved in that direction. Instead, it has become a more punitive society in which harsh punishment is central to reactions to rule breaking.¹⁰⁶ Central to this punitive society is a model in which the primary way of motivating compliance with the law is via the application of sanctions.

¹⁰³ Roberts and Stalans, 2004; Tyler, Boeckmann, Smith, & Huo, 1997.

¹⁰⁴ Ellsworth & Gross, 1994.

¹⁰⁵ Garland, 2001.

¹⁰⁶ Garland, 2001.

Do sanctions work? Lipsey and Cullen (in press) have recently reviewed the literature on the effectiveness of correctional rehabilitation. They examine the specific deterrence argument – that the punishment of offenders is effective in reducing their subsequent criminal behavior. Their findings support the conclusion that punishment has little or no effect on recidivism. This conclusion is also reached in several other recent reviews of the literature.¹⁰⁷ In particular, there is no relationship between the length of prison sentences and rates of reoffending. In fact, on the contrary, some studies suggest that sanctions may increase the likelihood of recidivism. For example, Sampson and Laub (1993) suggest that imprisonment weakens social bonds in the community, and consequently increases recidivism.

Is there an alternative? The same review by Lipsey and Cullen (in press) also argues for the value of alternative approaches. They suggest that rehabilitation has been shown to be effective in lowering rates of rehabilitation. This effect is found in a wide variety of experimental and quasi-experimental studies, although the magnitude of effects varies greatly across programs. Examinations of what works in rehabilitation¹⁰⁸ suggest that programs are successful to the degree that they target malleable risk factors which influence recidivism (anti-social attitudes; negative peer associations; problems with self-control and self-management; drug dependence, etc.). Research further suggests that there are effective cognitive behavioral and social learning approaches for dealing with these risk factors.¹⁰⁹

One new approach to managing rule breaking is restorative justice. The restorative justice approach deals with people who may have broken social rules. It seeks ways to heighten their future motiva-

¹⁰⁷ Akers and Sellers, 2004; Cullen, Pratt, Micelli, and Moon, 2002.

¹⁰⁸ See Andrews, Zinger, Hoge, 1990; Gendreau, 1996.

¹⁰⁹ Lipsey and Cullen, in press.

tions to engage psychologically and behaviorally in society. This engagement includes developing or becoming more committed to social values that promote self-regulation, and consequently adhering more closely to laws and social regulations in the future. In other words, both approaches view one important goal when dealing with people as being able to create better community members.

Do restorative justice approaches work? Research results support the facilitative role of restorative justice conferences.¹¹⁰ Studies suggest that, at least with regard to some types of crime, participating in a restorative justice conference leads to greater cooperation with the law in the future.¹¹¹ Such conferences, it seems, do increase the motivation to accept the law and the decisions of legal authorities and to be a law-abiding citizen. Work on restorative justice and reintegrative shaming provides further evidence that internal moral values play a pivotal role in motivating compliance with the law.¹¹²

What is the evidence concerning whether these many positive psychological outcomes lead to changes in long-term law related behavior? Nugent, Williams, and Umbreit (2003) reviewed 19 studies exploring the influence of victim-offender mediation (VOM) sessions and subsequent reoffending among juveniles during the one year period following the session. Their cautious conclusion is that the results “are consistent with the intriguing possibility that VOM participation may cause a decrease in delinquent behavior” (p. 162) and that the decrease “may be as great as 26 percent” (p. 162). This review does not, however, explore the psychological mechanisms by which these effects occur. This finding also does not address whether decreases in reoffending may also be found among adults.¹¹³

¹¹⁰ Roberts & Stalans, 2004; Sherman, 1999.

¹¹¹ Nugent, Williams, & Umbreit, 2003; Poulson, 2003.

¹¹² Sunshine and Tyler, 2003a; Tyler, 2006a; Tyler and Huo, 2002.

¹¹³ Poulson, 2003.

Latimer, Dowden, and Muise (2005) directly examined evidence concerning the impact of restorative justice on recidivism in adults. They concluded that in approximately $\frac{2}{3}$ of the programs studied, restorative justice programs “yielded reductions in recidivism compared to nonrestorative approaches to criminal behavior” (p. 137), a difference which they found statistically significant. Similar results were obtained by Bonta, Jessemann, Rugge, and Cormier (2006). Again, however, these authors do not examine the psychological mechanisms by which these effects occur.

During a restorative justice conference the rule-breaking behavior is recognized and punished, but an effort is also made to encourage the rule-breaker to recognize that his or her behavior violates social and moral codes that partially constitute the perpetrator’s own self-image. As a consequence, his or her criminal behavior should be personally upsetting. Thus, an effort is made to use the incident of rule-breaking as a way of encouraging the perpetrator to redouble his commitment to obeying the rules in the future. To achieve these goals, the restorative justice movement advocates sentences such as formal acknowledgement of wrongdoing, public apologies, and acts of restitution that connect people with the wrongness of their actions. From a restorative justice perspective, transgressions and disputes arising from them should be resolved through “reintegrative shaming” techniques.¹¹⁴ Reintegrative shaming combines strong moral disapproval of the offense with respect for the person who committed the offense.

The goal is to bring about reconciliation among victims, offenders, and the community at large. With regard to offenders, the primary goal is to encourage feelings of shame regarding one’s crimes, accepting responsibility, and sincerely apologizing for them; this is intended to restore the dignity of offenders. Essential to this proc-

¹¹⁴ Braithwaite, 2002.

ess is the social connection that perpetrators feel to their family, friends, and community, so these parties are present at restorative justice hearings, along with the victim and their family and friends. All of those present are involved in reconnecting the offender to a sense of moral responsibility in relation to the community as a whole. This reconnection, it is hoped, will enhance intrinsic motivation to engage in self-regulatory actions that will work against future transgressions of the law. The restorative justice argument mirrors the concern in procedural justice research with developing both formal and informal legal procedures that strengthen the influence of social and moral values on people’s law-related behavior.¹¹⁵

Restorative justice argues that the social goal that should dominate reactions to transgressions is to resolve the dispute via reintegrative shaming.¹¹⁶ Reintegrative shaming combines strong disapproval of bad conduct with respect for the person who committed those bad acts. The goal is restoring victims, offenders, and the community. In the case of offenders, the goal is to encourage feelings of shame regarding one’s bad acts, accepting responsibility, and sincerely apologizing. This restores the dignity of offenders. Key to this process is the social connection that people feel to their family, friends, and community. These parties are present at restorative justice hearings, along with the victim and their family, friends. All of those present are involved in reconnecting the offender to their sense of responsibility to their community. The goal of this reconnection is to encourage feelings of responsibility to family, friends, and community that will enhance commitment to self-regulatory actions. This commitment, in turn, works against future transgressions of the law.

¹¹⁵ Tyler & Darley, 2000.

¹¹⁶ Braithwaite, 2002.

This restorative justice argument mirrors the concern in procedural justice research with developing informal and formal legal procedures that have the effect of strengthening the influence of social values on people's law-related behavior. This can occur because people become more connected to their feelings of responsibility to others in their community, because they become more motivated to follow their moral principles, or because they feel greater obligation to defer to societal authorities and institutions. All of these internal motivations facilitate future law abidingness.

Three approaches can be distinguished, each of which seeks to activate people's internal motivations. Two have already been outlined, while restorative justice is a new concept. The procedural justice approach seeks to activate feelings of responsibility and obligation to authorities. Research makes clear that people feel that authorities are entitled to be obeyed when they exercise their authority using fair procedures.¹¹⁷ Further, the use of fair procedures leads people to feel that the authorities share their moral values.¹¹⁸ In both cases, the key psychological mechanism is the activation of internal social values, which then motivate self-regulatory behavior.

The moral value literature focuses on the development of strong moral values during the childhood socialization process. Those values then guide adult actions, leading people to be motivated to engage in actions that are consistent with their moral values. When they fail to do so, they feel the emotion of guilt. Guilt arises when one has engaged in actions inconsistent with one's self-image.¹¹⁹

Finally, the restorative justice approach focuses on engaging people's feelings of responsibility to their family and community. It argues that when people feel that they have damaged their image in

¹¹⁷ Tyler, 2006a.

¹¹⁸ Sunshine and Tyler, 2003b.

¹¹⁹ Tangney & Dearing, 2002.

the eyes of others, this has destructive consequences for themselves. People feel the damaging emotion of shame.¹²⁰ By seeking to separate out and repair the damaged self, while condemning the destructive action, the restorative conference has the goal of building positive connections to one's family, friends, and community. Those social bonds then sustain ongoing motivations to engage in socially appropriate behaviors that earn the approval of others.

Hence, each of these models views an important goal as being able to find ways to encourage desirable social behavior in the long-term by activating people's internal self-regulatory motivations. Irrespective of whether the relevant motivations are obligation to authorities, responsibility for following moral values, or social bonds with others, each provides the basis upon which a self-regulatory society can be developed.

Of course, obligation, shame, and guilt are not identical psychological motivations, and one question is whether one approach is more efficacious than others. Empirical research has not compared these various models, either to see if one is more influential than others or to explore whether they are separate psychological dynamics. The psychological mechanisms underlying the models underlined are generally unexamined in the literature.

Advocates of restorative justice hypothesize that diversion of criminal cases to restorative justice conferences should be more effective in lowering the rate of reoffending than traditional prosecution in court processing because the conferences more effectively engage the psychological mechanisms of reintegrative shaming and procedural justice. A study by Tyler, Sherman, Strang, Barnes, and Wood (2007)¹²¹ used longitudinal data from the drinking and driving study in the Australian Reintegrative Shaming Experiments

¹²⁰ Ahmed, Harris, Braithwaite, & Braithwaite, 2001; Scheff, 1997.

¹²¹ In press.

(RISE) to evaluate the long-term impact of reintegrative shaming and procedural justice on support for the law and on later recidivism as assessed through the use of police records and by self-report. The study tested the effectiveness of two social psychological mechanisms for reducing recidivism: procedural justice and reintegrative shaming. Theory underpinning each of these mechanisms suggests that these mechanisms are ways to respond to wrongdoing that increase offenders' support for and likelihood of future compliance with the law.

The social psychological mechanisms underlying effective legal procedures

One way that restorative justice conferences are suggested to be effective in lowering reoffending is via the mechanism of reintegrative shaming through which offenders reconnect with positive aspects of themselves and ties to significant others in their lives, while also recognizing the inappropriateness of their past conduct.¹²² This reintegration with the social ties within which they live creates a set of interpersonal expectations that they are committed to following into the future.

Restorative justice conferences are designed to allow offenders to reconnect with important others in their lives. By seeing that they are respected and loved by people who they in turn respect and love, and who condemn their bad behavior but do not view them as a bad person, offenders reestablish links to important significant others.¹²³ Both their desire to maintain those links and to maintain a favorable sense of self motivate offenders not to reoffend. While the development of such connections is a psychological mechanism, it is important to recognize that the arguments of restorative justice theory are rooted in sociological theories about the value of

¹²² Also see Ahmed, Harris, Braithwaite, & Braithwaite, 2001.

¹²³ Ahmed, Harris, Braithwaite, and Braithwaite, 2001.

social ties to others (i.e. family, friends, community, etc.).¹²⁴ These mechanisms are complex and this study draws upon one particular operationalization of reintegrative shaming; that used by Ahmed, Harris, Braithwaite, and Braithwaite (2001).

A second reason that restorative justice conferences are predicted to lead to long-term compliance is that they are evaluated by offenders as procedurally fair ways to deal with their transgressions. Procedural justice theories argue that experiencing fair procedures leads offenders to view the law and legal authorities as legitimate, leading to enhanced commitment to obey the law. This procedural justice argument is widely supported in studies of the willingness to accept decisions made by legal authorities.¹²⁵ Sherman (1993) has similarly suggested that informal case processing reduces defiance of and resistance to conventional rules.

Restorative justice conferences have the capacity to display many of the features associated with procedural justice.¹²⁶ They allow opportunities to participate by stating one's case and having influence over how the case is resolved. They allow people to see that decisions are being made in ways consistent with rules and without bias. They allow offenders to evaluate the trustworthiness of authorities and give authorities the opportunity to communicate respect for offenders as people and for their rights.¹²⁷ In other words, effective restorative justice conferences should be experienced by offenders as being procedurally just.

Offenders are predicted to be less likely to reoffend when the psychological processes associated with procedural justice are activated. When people experience just treatment by authorities, they

¹²⁴ See Braithwaite, 1989, 2002.

¹²⁵ Tyler, 2000, 2003, 2006a, 2006b; Tyler and Huo, 2002.

¹²⁶ Barnes, 1999.

¹²⁷ For an elaboration of these aspects of procedural justice, see Tyler, 1988, 2000; Tyler and Lind, 1992.

are predicted to increase their beliefs that the law is legitimate and ought to be obeyed. These beliefs, in turn, are predicted to motivate compliance with the law. Again, this psychological model predicts that legal procedures will lower subsequent rates of offending when the psychological process of procedural justice is activated.

The RISE experiments

The Australian Reintegrative Shaming Experiments (RISE) are a major effort to conduct an experimental evaluation of the effectiveness of diversionary restorative justice conferences on repeat offending. They consist of four separate experiments: drinking and driving for adults, juvenile personal property crime, juvenile shoplifting from large stores and violent crime committed by offenders aged up to 29 years. My goal here is to provide a test of the power of procedural justice and reintegrative shaming by linking them to later support for the law, to subsequent self-reported behavior, and to reoffending as recorded in police records. The study I outline uses longitudinal data focusing upon the use of restorative justice conferences and court cases to dispose of 900 cases of drinking and driving over the statutory limit.¹²⁸

As in all of the RISE field tests, offenders were randomly assigned either to be prosecuted and receive traditional courtroom adjudication for this offense or to have their cases handled via a restorative justice conference. This analysis, however, does not focus only on the main effects of the randomized experiment, which did not demonstrate statistically significant lower rates of re-offending in the group randomly assigned to RJ conferences. It also employs the substantial data on each case gathered in the drinking and driving experiment in order to examine the long-term influence of the pro-

¹²⁸ Tyler, Sherman, Strang, Barnes, and Woods, 2007.

cedure offenders experienced upon their later law-related attitudes and drinking and driving behavior.

The key psychological hypothesis to be tested is that, when the psychological processes of either procedural justice and/or reintegrative shaming are effectively engaged, people develop values that support long-term compliance with the law. Those values are the belief that reoffending would create interpersonal problems in one's relationships with others and the judgment that the law is legitimate and ought to be obeyed. Offenders then become more supportive of the law and less likely to reoffend.

This hypothesis is tested using three types of data about the post-treatment behavior of offenders: (1) self-reports of efforts to follow the law two years after the case disposition by conference or prosecution; (2) self-reports of drinking and driving behavior during the two years following case disposition by conference or prosecution; and (3) police records of rearrest during the four year period following case disposition by conference or prosecution. These police records indicate whether people were arrested for reoffending both during the two year period prior to the second interview (years 1-2), and/or during the two year period following the second interview (years 3-4).

The findings provide support for the arguments underlying procedural justice and reintegrative shaming models. The psychological models hypothesize that experiencing procedural justice and reintegrative shaming would encourage a favorable orientation toward the law and lead to higher levels of adherence.

The psychological argument can be directly tested by examining the influence of: (1) views about whether the law is legitimate and whether reoffending would create interpersonal problems, expressed during the time two interview two years after the treatment

and (2) judgments about the procedural justice and reintegrative shaming associated with the initial conference/court processing, assessed during the time one interview. Because these analyses have behavior as their dependent variable, logistic regression was utilized. And, because legitimacy and the interpersonal problems of recidivism were measured two years after the initial procedure, only impact on behavior during years 3 and 4 was considered.

The analysis first considered the influence of legitimacy and the interpersonal problems associated with recidivism (measured during the second interview) on recidivism behavior after the second interview (years 3-4). The analysis indicates that the findings for legitimacy are consistent with the hypothesis. Those who viewed the law as more legitimate were found to be less likely to show recidivism, as reflected in police records. These findings suggest that the key issue shaping recidivism was the degree to which people viewed the law as legitimate. If people viewed the law as legitimate two years after their treatment, then they were significantly less likely to be breaking the law. This effect occurred with police recorded law violations, suggesting that it was not a reflection of self-report biases.

The analysis of the relationship between legitimacy and police recorded offending also provided an opportunity to address the question of whether the influence of legitimacy was not just statistically significant, but substantial. One way to address this question was to consider the estimates of percent of variance explained by logistical regression.¹²⁹ That procedure estimates that approximately 5% of the variance in recidivism was explained by the variables in the equation.

¹²⁹ See Cohen, Cohen, West and Aiken, 2003.

A second approach is to divide offenders into high and low legitimacy group and examine the rate of recidivism within each group. To do so those interviewed at time two were divided into four groups based upon their judgments about the legitimacy of the law. The rate of recidivism was then examined within each group. The rates: for the very high group were 3.3%; for the high group 5.4%; for the low group 9.1% and for the very low group 15.6%. In other words, those who viewed the system as highly legitimate were about 13% less likely to be rearrested during years 3-4 of the study.

Regression analysis was also used to see whether legitimacy was linked to self-reported recidivism, as expressed during the second interview. Those who indicated that the law was more legitimate also self-reported lower frequencies of driving while drunk and said that they were making greater efforts not to drink and drive. These results indicate that legitimacy explained about 13-15% of the variance of self-reported behavior. This conclusion is similar to that suggested by the prior analysis, in which the high and low legitimacy groups differed 13% in their police recorded rate of recidivism.

Were procedural justice and reintegration important as antecedents of legitimacy? Both procedural justice and reintegrative shaming were found to shape later legitimacy. Hence, both procedural justice and reintegrative shaming only influenced reoffending behavior by shaping later views about the legitimacy of the law. An interaction analysis indicates that the two processes separately shaped legitimacy. Those who experienced greater procedural justice and higher levels of reintegrative shaming during their conference or court processing were found two years later to view the law as more legitimate. That later legitimacy, in turn, led to reduced levels of offending.

The psychological impact of going through a procedure in response to being accused of driving while drunk was examined by compar-

ing the mean level of procedural justice and reintegrative shaming for conferences and court processing. They indicate that, as predicted, conferences were judged to be more procedurally just and to motivate higher levels of reintegrative shaming. This was true for procedural justice; reintegrative the legitimacy of the law and the interpersonal problems associated with recidivism. All measures showed conferences to have significantly more psychological impact.

These psychological measurements suggest that conferences worked as desired and that the best explanation for the failure of the experimental treatment to have an impact is weakness of the treatment. The treatment had the desired influence, but did not produce a strong enough effect to impact upon behavior. The theory underlying the RISE experiments is sound, and the predicted psychological dynamics occurred. However, for the many reasons outlined earlier, the treatment was too weak to produce strong direct influences on reoffending behavior. Hence, a more effectively designed and delivered treatment would have produced the anticipated treatment effect.

Discussion

There are many attractive features of restorative justice conferences. For example, they are found to be more satisfying for victims of crime,¹³⁰ and they have many positive psychological effects on offenders.¹³¹ Hence, even if restorative justice conferences did not lead to a lower rate of reoffending over time, they might have social value and be publicly popular,¹³² provided they did not actually increase reoffending. Nonetheless, the suggestion that restorative justice conferences lower the rate of reoffending over time is

¹³⁰ Strang, 2002.

¹³¹ Barnes, 1999; Poulson, 2003.

¹³² Roberts and Stalans, 2004.

one aspect of their widespread adoption, and this empirical claim needs to be tested.

The results of this study support the argument that the psychological dynamics identified by procedural justice and reintegrative shaming models, when either one is activated, lead to reductions in reoffending. Hence, the results of the study lend support to the hypothesis that the use of RJ conferences could potentially lead to reductions in recidivism, but only if the necessary psychological mechanisms are engaged by the offender's experience. The crime-reducing influence, in other words, is not an automatic result of being diverted from prosecution, but only occurs if the conferences activate the psychological mechanisms of procedural justice and reintegrative shaming.

If the appropriate psychological forces are activated then, years after they participated in a restorative justice conference or court processing, adults charged with drinking and driving are *more* supportive of the law and *less* likely to reoffend, relative to those offenders sent to court. Again, however, this was only true if the conference was experienced as procedurally just and if it led them to feel reintegrative shame. These effects are modest in their magnitude, with legitimacy accounting for somewhere between 5 and 15% of the variance in police recorded reoffending.

Two aspects of the findings show promise. First, reductions occurred if psychological mechanisms were engaged even when reoffending was indexed by police records. Since the potential problems of self-reported offending are well known, it is important that the reductions in reoffending are documented using police-reported crimes. Because of the random nature of police stops with this particular offense, this is an ideal setting in which to use police records to index offending. However, even in this case, the probability of being arrested for an offense is low. It is therefore

encouraging that the results for police recorded and self-reported behavior are similar.

Second, the reduction in behavior persisted over time. In this case, respondents were interviewed two years after their initial experience and there were still clear increases in support for the law and reductions in rule breaking linked to their experiences. In particular, reductions in police reported rule breaking were found for years three and four.

This study suggests that the strength of the impact of conferences depends upon their ability to effectively lead offenders to feel both fairly treated and that their ties to others have been restored through reintegrative shaming. The real power of conferences is engaged when they create the desired and desirable psychological conditions leading to rule-following. These were procedural justice and reintegrative shaming.

It is also important to note that, although separate results are not presented for those in prosecution and in RJ conferences, the study finds similar dynamics within conferences and prosecution. That is, while those who were involved in conferences experienced higher levels of procedural justice and more reintegrative shaming, within both conferences and court, those who experienced these feelings were less likely to reoffend. This suggests that it would also be possible to lower the rate of recidivism by redesigning traditional court-based prosecution experiences.

Since conferences were more likely to create the psychological dynamics needed to lower reoffending than were court appearances, redesigning court processes would be an inferior strategy in comparison to diversion into appropriately designed conferences. However, if diversionary programs did not exist and could not be created, those managing courts could address the issue of recidi-

visms by trying to understand how people could experience procedural justice and reintegrative shaming within a court context. That understanding could then be used to redesign court procedures.

The findings of this study suggest strongly that under the right conditions restorative justice conferences can have positive influences on future attitudes and behavior. The challenge for future research is to identify which RJ processes provide the greatest opportunity to use RJ to reduce recidivism. The findings point to a clear need to better understand how the features of restorative conferences/court cases map onto their psychological impact, and how similar RJ procedures may affect different kinds of people depending upon their predispositions. While it is not possible to rule out all possible dispositional explanations for the effects observed, without relying upon randomized assignment to treatments, controls were made upon demographic variables to eliminate some potential prior influences.

The best way to increase the impact of restorative justice conferences on subsequent behavior is therefore to better understand how such conferences lead offenders to feel fairly treated by the system and ashamed of their behavior. Experience of an RJ conference is not, in and of itself, an effective psychological experience. The conference has to create the desired psychological characteristics to produce a long-term impact. A further analysis of observer ratings of the trials and conferences in the study indicated that high levels of free choice, high levels of participation, and low levels of moral condemnation were all features of procedures that encouraged participants to feel that the conferences were just procedures and to experience reintegrative shaming.

The two paths of influence found in this study correspond to the two arguments underlying the restorative justice literature about why conferences should influence people. First, successful confer-

ences incorporated the features associated with procedural justice, features such as opportunities to participate and to have others take account of one's views. They also allowed other people the opportunity to demonstrate that their motivations were trustworthy and that they understood the perspective of the offender, the victim, and others at the conference. Procedural fairness is widely associated with legitimacy judgments and, through legitimacy, with rule following¹³³ and that connection was also found in this analysis.

The other path is associated with reintegrative shaming. In this path some people restored their ties to others after experiencing shame over their behavior and it was concern about those ties which motivated subsequent rule-following. In this study people who said that the treatment restored their connections to others indicated both that the law was more legitimate and that it would be more of a personal problem to them to break rules, an action which would again undermine those interpersonal ties. These findings point, in particular, to reintegrative shaming as a key mediating variable shaping the influence of conferences upon later behavior.

These findings suggest that there are two reasons that people are more likely to follow rules after the transgression of drinking and driving. The first is because their commitment to and sense of obligation toward law and legal authorities has been strengthened. The second is because their emotional connections to others – family, friends, members of the community, and possibly authorities – are also strengthened and they therefore think that future transgressions would be more problematic for them and their family. Both reasons were linked in this study to the motivation to obey the law.

This extension is important because the cases studied here reflect the type of everyday law-related behavior among adults that is cen-

¹³³ Tyler, 2006a, 2006b; Tyler and Huo, 2002.

tral to the viability of law and the legal system. Driving while under the influence of alcohol is a behavior that is widespread within the adult population of Australia, as well as in other Western countries. It reflects a type of behavior which is difficult to control without the massive deployment of law enforcement resources, and a behavior that could most desirably be managed via self-regulation.¹³⁴

What is the relationship between the psychological processes associated with procedural justice and with reintegrative shaming? Common ideas such as having a chance to express one's views and having evidence that one's concerns are attended to occur within both literatures. Here the two processes were found to be connected, with those who indicated that a procedure was just also indicating that it led to reintegrative shaming ($r = 0.49, p < .001$). This suggests that participants experienced the two psychological processes under similar circumstances.

On the other hand, interaction effects were not found when procedural justice and reintegrative shaming were considered together. People were not especially strongly likely to view the law as legitimate, nor were they especially strongly likely not to reoffend if they indicated that they experienced both procedural justice and reintegrative shaming. Instead, the two psychological judgments were additive, with each contributing some influence to judging the law to be legitimate and to subsequent law abiding behavior. This suggests that the two psychological processes were distinct, but had parallel influences.

Legitimacy and compliance

The dynamics of legitimacy are supported by the findings of this study. Legitimacy is found to shape compliance with the law, with those who view the law as legitimate more likely to obey it. This

¹³⁴ Tyler, 2003.

relationship is found both with police recorded reoffending and with self-reported rule breaking. In both cases, as predicted by socio-legal models, legitimacy motivates compliance.

Further, as predicted by psychological models of legitimacy,¹³⁵ procedural justice shapes legitimacy. In this case, the procedural justice of the conference/court processing is found to shape legitimacy two years after that experience. Hence, these findings support the suggestion that procedural justice contributes to long-term adherence to the law by enhancing supportive attitudes toward the legal system.

In addition, the findings suggest that the experience of reintegrative shaming also shapes legitimacy. This finding is an important addition to the existing literature on legitimacy, linking legitimacy to the restorative justice movement and to the conferences developed and implemented within the context of that movement. While it has been widely suggested that the emotions aroused within such conferences may shape people's subsequent interpersonal relationships, leading to the motivation not to reoffend due to the desire not to disappoint others, the findings of this study suggest that the use of restorative justice conferences also enhances compliance by building the legitimacy of the law. Of course, this is not completely surprising. As noted, the psychological dynamics of reintegrative shaming and of procedural justice are similar. Nonetheless, this study finds that procedural justice and reintegrative shaming have distinct influences upon legitimacy, suggesting that each makes a distinct contribution to people's views about the legitimacy of the law.

As is often the case with criminal justice innovation, the popularity and use of restorative justice conferences has moved rapidly ahead

¹³⁵ Tyler, 2006a, 2006b.

of the existence of clear evidence that such conferences produce their desired outcomes. This paper examines one of those desired outcomes – the lowering of recidivism. Despite the lack of an observed treatment effect, the results lead us to be optimistic that properly designed and implemented procedures can lower the rate of reoffending among adult offenders. Hence, the findings reported here suggest that there are alternatives to traditional adjudication which can more effectively address the issue of recidivism.

The findings make clear that the influence of both procedural justice and reintegrative shaming on recidivism in years three and four occurred through their influence upon time two attitudes. Those individuals who felt at time two that the law was legitimate were less likely to later break the law. Hence, the issue is how those attitudes toward law were formed. In this study procedural justice and reintegrative shaming at the time of the treatment were found to shape attitudes two years later.

Such a demonstration of long-term influence upon behavior comes at an important time. Because of past sentencing policies large numbers of offenders have been imprisoned. These prisoners are emerging from prison in record numbers, raising the issue of how society can cope with their reentry into the general population.¹³⁶ This problem, combined with the high costs of maintaining large prison populations, is directing new attention to the question of whether there are effective alternatives to imprisonment. One clear alternative is designing procedures for dealing with initial law breaking that lead to lower rates of recidivism. Procedures that succeed in maximizing perceptions by offenders of procedural justice and the experience of reintegrative shaming are likely to lead to lower rates of recidivism and thus potentially lower rates of imprisonment.

¹³⁶ Travis, 2004.

Changing the culture of social control

Irrespective of which of these models is the focus of concern, the general message is the same. The current focus on punishment as a mechanism through which to shape the behavior of both wrongdoers and people in general has had negative effects on society, particularly American society. It has led to a dramatic growth in the American prison population, and soured the relationship between the law, legal authorities, and members of society. It has had a particularly negative impact on the minority community.

Of course, in talking about a change in the culture of social control it is important to acknowledge that environmental influences are broader in scope than just the approaches used by legal authorities to shape public behavior. The entire world in which people live is a part of their environment. As an example, when prisoners leave prison they return to their prior environment. When, as is often the case, that environment is one of poverty, lack of economic opportunity, and widespread crime, those environmental forces shape behavior. A person may have learned a set of supportive values that favor following the law during a rehabilitation process, but those values can easily be overwhelmed by the forces within their environment.

This environmental feature of behavior is generally consistent with the argument of psychologists that situations play a role in shaping behavior. However, as Lewin argues, that is likely to be particularly the case when values are weak and/or when situational forces are strong. So, particularly strong environmental forces, of the type found when people have trouble finding viable job opportunities within the parameters of the law and live in a culture of widespread crime, are likely to overwhelm values.

These comments simply point to a reality – a value based approach has to be taken in context. If the context is one of strong environ-

mental forces denying people the opportunity to pursue avenues that are consistent with their values (i.e. gainful employment), and providing strong environmental incentives to violate those values, then values will not be the primary factor shaping what people do.

It is important to note this situational impact because legal scholarship often pays little attention to the role of situations in people's lives.¹³⁷ How does it influence my argument? Primarily by introducing realism. We need to recognize the importance of providing a supportive environment as a framework within which values can be effective. While people may not be threatened with punishment, if they cannot find work to buy food, they are likely to steal, irrespective of their values. Hence, values are most likely to work when supported by a desirable environment.

A self-regulatory approach

The goal of the procedural justice model, like the restorative model, is to articulate a different approach to managing issues of social order and social control. Both models, like the moral socialization model, argue that most people have social values and social bonds that motivate them to follow most rules most of the time. It is this motivational force that generally sustains societies, freeing legal authorities to focus on managing that small subset of people who lack such values and ties.¹³⁸

The procedural justice model focuses on everyday rule following. It suggests that the key to motivating compliance based on internal social values is to maintain the legitimacy of the law and of legal authorities. To do so legal authorities need to focus on exercising legal authority fairly. That procedural fairness encourages people to feel that the law is legitimate and ought to be obeyed. As a conse-

¹³⁷ Hanson and Yosifon, 2003; Ross and Shestowsky, 2003.

¹³⁸ Ayres & Braithwaite, 1992.

quence, people become self-regulatory, and follow the law as a consequence of their own internal values.

In addition, the procedural justice model has implications for people's personal experiences with law. When people come before the law, for example because they have broken some law and appear in court or deal with a police officer, there are several goals that are important. One is to deal with appropriate punishment or restitution. The other, emphasized by the procedural justice model, is to encourage feelings of legitimacy among those dealing with the legal system. In other words, each encounter that people have with authorities is an instance of civic education, which teaches people about the law. Evidence suggests that even when people are being sanctioned by the law, they are also being educated about the nature of the law and legal authorities.¹³⁹

Like the procedural justice model, the restorative justice model also deals with legal procedures that are initiated when someone breaks a legal rule. The goal of restorative procedures is also to further people's loyalty to and adherence with legal rules in the future. In the case of restorative justice, the restorative justice conference seeks to motivate such immediate and future behavior by separating the "good" person from their "bad" conduct. The conferences then seek to both deal with the consequences of the bad conduct and, separately, to connect the good person to their motivation to behave in ways that win respect from their family, friends, and community. It is this connection with one's favorable self-image that motivates compliance in the future.

Hence, both of these models argue for the possibility of a society that focuses on punishing wrongdoing, but upon creating and maintaining people who are motivated by their own internal values

¹³⁹ Tyler & Huo, 2002.

and social bonds to self-regulate. As Tyler and Huo (2002) argue, the success of such efforts builds momentum over time. They demonstrated that those people who view the law as legitimate respond to that view by evaluating their personal experiences with the police and courts in more process-oriented ways. Hence, the existence of legitimacy makes it easier for policing to occur based upon the use of fair procedures. This, in turn, further enhances the possibility of creating legitimacy.

The comparison of these approaches makes clear that there are several conceptual issues underlying the distinctions among restorative justice and the ideas of problem oriented and community policing, a topic I have previously discussed. One issue is what the appropriate responsibilities of the police should be. Traditionally the police are responsible for enforcing the law by regulating public behavior and apprehending those who break laws. Those people are evaluated and potentially punished by the courts. Recently there have been arguments for an expanded police role in helping to solve community problems, and help communities to solidify themselves as communities. These arguments stem in part from the recognition that the police cannot effectively control crime without community assistance,¹⁴⁰ and in part from the suggestion that at least some members of the public would like for the police to have a broader role in the community than just rule enforcement and crime control.

A second issue is who should deal with rule breaking. Within modern societies, the state has the central authority for deciding how to react to rule breaking, with the police and courts deciding who to arrest, how to determine wrongdoing, and how to punish for wrongdoing. This has led to a variety of types of discontent. The victims of crime feel excluded from the determination of punish-

¹⁴⁰ Sampson, Raudenbush, & Earls, 1997; Sampson & Bartusch, 1998.

ment, and would like to have a greater role in deciding how to deal with criminals. Communities would also like a greater role, in part because they feel that the punishments of the formal legal system depart from the communities' feelings about what is right and wrong.¹⁴¹ These groups have argued for greater opportunities to participate in determinations of how to deal with crime and criminals.

Finally, there is the question of how crime should be dealt with. The current legal system emphasizes determinations of guilt and the application of punishment. However, approaches such as the restorative justice model argue for the value of seeking to rehabilitate offenders – emphasizing the encouragement of future law abiding behavior as the goal over punishment for past wrongs. This goal leads to efforts to work with the families and communities affected by the crime to encourage the criminal to come into compliance with community norms and values. Restorative justice itself is a model for the goal that should shape reactions to wrongdoing. It does not speak to the issue of who – the community, the police, the courts – should have the authority to manage responses to deviant behavior. In a series of experiments conducted in Australia, for example, the police managed restorative justice sessions.¹⁴² However, in many of the traditional dispute resolution approaches from which restorative justice draws its inspiration, the community and community leaders were the key authorities. The restorative justice approach is a model for how to react to wrongdoing, rather than a model of policing, but it can be applied to policing if the police adopt a restorative justice approach to their dealings with wrongdoers.

Procedural justice does not focus on shame, rather it focuses on obligation and responsibility. However, both shame and obligation

are internal motivations for self-regulatory behavior. In fact, we can combine these with a third motivation noted earlier in the discussion – morality – to identify three self-regulatory motivations. These are (1) procedural justice, which shapes legitimacy by activating obligation; (2) restorative justice, which shapes relationships to others by activating shame; and (3) moral value based approaches, which focus upon principles of right and wrong and are based upon guilt.

While all three are united in their goal of activating people's internal values, they focus on different issues. Procedural justice focuses on feelings of obligation and responsibility to authorities. Restorative justice is concerned with people's relationships to others and the shame that occurs when people disappoint others. Moral values lead to guilt when a person violates their own personal standards of right and wrong.

In contrast, sanction-based approaches undermine and lessen the influence of people's values on their behavior. Social psychologists make clear that one consequence of focusing on incentives and sanctions within a given situation is that people's behavior becomes more strongly linked to those instrumental factors. If people have internal motivations, such as social values, the role of those values in shaping the behavior is "crowded out" and becomes less important.¹⁴³ In the long run, the use of sanction-based approaches has the consequence of undermining the influence of social values on behavior. The use of sanctions today means that greater and more frequent sanction use will be required in the future, since people's values will be undermined.

¹⁴¹ Robinson & Darley, 1995.

¹⁴² Braithwaite, 1989; 2002.

¹⁴³ Deci, 1975; Frey, 1994.

Can these models be implemented?

As noted at the beginning of this discussion, there is evidence that these models can be effective, but can they be implemented? One problem that might lie in the way are public views about how to respond to wrongdoing. These views are linked to public judgments about whether people can be changed and, if so, how best to achieve change. In the 1960's there was a strong belief that people could be rehabilitated. However, the greater punitiveness already noted might suggest that this belief has changed among Americans.

Tyler and Boeckmann (1997) found that people in a sample of Californians indicated that they did not feel that people could be changed when they felt that wrongdoers lacked core moral and social values and social bonds that could be appealed to and activated among wrongdoers. The feeling that there were no common core values or social bonds shared by wrongdoers and others in the community, when found, was linked to the view that American society has become culturally diverse. This belief was also linked to support for the punitive "three strikes" law, which is a clear alternative view to the idea of rehabilitation and restoration. Hence, one aspect of the challenge posed by restorative justice is to educate the public to the feasibility of these approaches to managing wrongdoing.

How serious was this potential problem? To address this question, we can look at the results of interviews of Californians conducted by Tyler and Boeckmann (1997). Those interviews were conducted in the wake of the passage of the "three strikes" initiative, a punitive measure mandating life in prison for three felony convictions. Do the views of those in this sample support the argument that people do not believe in the possibility of rehabilitation? Interestingly no. People were asked that question, as well as several related other questions on what works. They indicated that people generally think that shaming and moral education are the most effective

ways to control crime. It is striking that people, while they may support punitive measures, do not view them as particularly effective. Hence, if they felt that the conditions were such that rehabilitation and moral education were possible, people would support those approaches as being more effective.

The question that we might best ask is why people do or do not think that these different approaches are effective. If we look at the role of whether people think that there is a sense of obligation to obey the law, trust in legal authorities, moral values, and social bonds on whether they think that different approaches to dealing with crime are effective. The results suggest that people think rehabilitation will work if people have shared moral values and if they think that people trust legal authorities. They think that shaming works when there are shared social bonds, shared moral values and feelings of obligation to obey the law. They believe that moral education works when people have shared moral values. And they think that punishment is more effective when people share moral values and social bonds, and feel an obligation to obey the law.

These findings reinforce the idea that people are punitive not because they feel it is an optimal strategy. Rather, they think that the strategies outlined by the procedural justice and restorative justice models are more likely to be effective in reducing the problem of crime. That effectiveness, however, depends on the existence of shared moral values, shared social ties, and feelings of trust, confidence, and obligation toward law. Hence, one strategy is to communicate the findings outlined above, findings showing that procedural and restorative approaches do work.

The challenge for the future is to reverse an alarming trend in societies' approaches to wrongdoing. Over recent decades there has been increasing punitiveness. The public has been preoccupied with punishment for wrongdoing, focusing on ever more severe

sanctions. This trend is especially troubling because in earlier eras the focus of much of the effort when dealing with wrongdoing was upon the rehabilitation of offenders. The procedural justice and restorative justice approaches share the underlying belief that people can be rehabilitated and that society and the legal system have a great deal to gain from focusing on the possibilities of rehabilitation and the restoration of people as law abiding members of society. Further, both models have provided compelling empirical evidence in support for their arguments. These findings aside, it is clear that efforts to change the current paradigm for dealing with wrongdoing must involve substantial changes in public views about both society and human motivation.

VII. ORGANIZATIONAL SETTINGS

The focus upon the relationship between legal authorities and members of the communities over which they exercise authority is the traditional concern of discussions of law and criminal justice. However, the same issues are involved in to other important literatures. The first literature is concerned about how to shape the behavior of employees in for profit organizations. The second literature examines how to shape the behavior of agents of social control.

Corporate Wrongdoing and Organizational Legitimacy

Can businesses effectively engage in internal regulation of employee behavior, and if so, what strategies should they use to best achieve that objective? Recent corporate scandals have evoked a heightened concern among members of the public, government officials, and business leaders about both whether businesses can regulate the conduct of their employees, as well as about how to effectively secure employee adherence with corporate rules and policies. Such adherence is important in a wide variety of work settings, and involves organizational policies that cover, among other things, accurate accounting, conflicts of interest, product or service quality, environmental safety, sexual harassment, and race, gender and/or sexual orientation discrimination. In these and many other ways gaining adherence to organizational policies that control everyday employee behavior is critical for successful organizational functioning.

To avoid these types of problems, organizations rely on their employees to follow the formal rules and procedures they establish. Such rule following is critical for organizations to function effectively, a reality that is apparent in the significant time and re-

sources devoted to controlling employee behavior.¹⁴⁴ While there is little question that gaining adherence to organizational policies is critical for successful organizational functioning,¹⁴⁵ the strategies organizations should use to best achieve that objective is more debatable.

The importance of identifying optimal strategies to engender rule following is linked to the significant challenge that is presented by trying to achieve employee adherence to organizational rules and policies. Indeed, there has long been extensive evidence that non-compliance within organizations is widespread.¹⁴⁶ Recent corporate scandals similarly reinforce this point, and have heightened the concern among business and government officials over successfully regulating the conduct of employees. These events, as well as the more mundane and common rule-breaking in organizations that occurs daily, make clear why organizational researchers should be concerned with identifying optimal strategies for achieving employee rule and policy adherence.

In this essay I compare the utility of two approaches to achieving rule adherence: the command-and-control approach and the self-regulatory approach. Here my concern is to apply this distinction to the rule following behavior of employees in for profit work organizations.

The command-and-control model represents a traditional approach to encouraging rule following, insofar as it operates via extrinsic forces and draws upon employees' instrumental concerns and utility maximization goals. It is based on the view that people follow rules as a function of the costs and benefits they associate with do-

¹⁴⁴ O'Reilly, 1989.

¹⁴⁵ Bell, McLaughlin, & Sequeira, 2002.

¹⁴⁶ E.g., Frederick, 1995; Mintz, 2001; Rice, 1992; Simon & Eitzen, 1990; Spence, 2001.

ing so. It is rooted in traditional economic theory, insofar as it assumes that employees are rational actors who are primarily concerned about maximizing their own outcomes in work settings, and it embodies the principles of approaches such as agency theory that emphasize the influence of self-interested outcome maximization on employee behavior. The command and control approach argues that employees are instrumentally motivated and are thus primarily interested in the resources and outcomes they receive from their organizations. Therefore, organizations need to take an active role in enforcing rules by providing incentives (to encourage desired behavior) and sanctions (to discourage undesirable behavior). Interestingly, while there is much discourse in the organizational literature over incentives,¹⁴⁷ there has not been a parallel discussion regarding the potential strengths and pitfalls of punishments as motivational tools.

It would be difficult to overestimate the prevalence of command and control mechanisms in the US workplace. For example, the extensive use of surveillance techniques – by managers, cameras, the monitoring of telephone calls and computer usage, etc. – is an artifact of the implementation of command and control techniques. Drug testing, searching employees' cars and lockers, and the use of time clocks and other performance tracking devices similarly reflect the view that rule following develops from a credible fear of detection.

Do such techniques work? Some studies supporting this argument in work settings,¹⁴⁸ but, the efficacy of command-and-control strategies has likewise been questioned.¹⁴⁹ Skepticism of this approach is less common among organizational scholars, than in the field of law, and thus the managerial relevance of critiques of social control

¹⁴⁷ Kohn, 1999.

¹⁴⁸ Huselid, 1995; Jenkins, Mitra, Gupta, & Shaw, 1998.

¹⁴⁹ Katyal, 1997; Malloy, 2002; Markell, 2000; Sutinen & Kuperan, 1999.

remains an open issue. One reason for the greater support of the instrumental model in work settings is the possibility of using incentives as well as sanctions to motivate behavior. Incentives are more effective than sanctions.¹⁵⁰

I empirically examine the influence of the command-and-control approach on employee rule-following in the two employee studies.¹⁵¹ I do so by examining employee perceptions of the likelihood that their behavior will be detected, combined with their perceptions regarding the sanctions and incentives presented to them for engaging in undesirable and desirable behavior (respectively). By considering both sanctions and incentives, we cover the breadth of instrumental or extrinsic motivations that shape employee behavior. That is, I cover the range of cost/benefit analyses that may underlie employees' decisions whether to follow organizational rules or not.

The *self-regulatory model* represents an alternative approach to encouraging rule following because it focuses on employees' intrinsic motivations. It identifies rule-following as originating with an individual's intrinsic desire to follow organizational rules, and not with external contingencies in the environment that are linked to rule-following.

The value based approach examines the influence of two judgments regarding an employee's work organization: 1) the perceived legitimacy of the organization's rules and authorities and 2) the congruence of those rules with an employee's moral values. Legitimacy refers to the view that "the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs and definitions",¹⁵² and thus feelings

¹⁵⁰ Podsakoff, Bommer, Podsakoff, and MacKenzie, 2006.

¹⁵¹ See Tyler and Blader, 2005.

¹⁵² Suchman, 1995, p. 574.

of legitimacy are expected to be related to adherence to rules and policies. Congruence between rules and an individual's moral values should also motivate adherence, as people strive to follow their inclinations to do what they feel is morally right. The self-regulatory approach argues that the concerns embodied in these two judgments can intrinsically motivate employees to feel a personal responsibility and desire to bring their behavior into line with corporate rules and policies.

The first study is based on questionnaires distributed to the employees of one division of a multinational banking firm. The second study is based on an internet-based survey conducted on a national panel of employees, with supervisor ratings of respondent's rule following behavior for a subset of these employees. The studies complement one another, since one is conducted within the division of a single organization and the other represents a broader cross-section of occupations, industries, and organizations.

Together, the findings largely confirm the hypothesized influence of a self-regulatory approach to employee rule following. They indicate that employees follow organizational rules, and are perceived by their supervisors as following those rules, when they hold favorable social values that promote rule following. Command and control concerns, such as detection of behavior and incentives and sanctions associated with behavior, were important predictors of whether employees reported following organizational rules, but were not predictive of supervisor ratings of employee rule following nor were they even the primary predictors of employee reports of deference and rule following. These results provide additional support for the premise that self-regulatory strategies, and the variables associated with them, are particularly useful for gaining employee adherence to organizational rules.

Social values and workplace rule adherence

These studies support the argument that employees' social value judgments shape their behavior, and in particular their rule-following behavior. Those judgments are a major motivation leading to employee adherence with company policies and rules, and they also lead to lower levels of rule breaking behavior on the part of employees. These results suggest that one promising way to bring the behavior of corporate employees into line with corporate codes of conduct is to tap into their social values. To gain acceptance for corporate rules and policies, companies should activate employee values. These values are central to the self-regulatory strategy for achieving employee compliance.

Of course, the activation of employee values is not the only way to influence rule-related behavior. As is the practice in many organizations, organizational efforts to monitor employees and sanction/reward their behavior may likewise motivate employees to follow organizational policies, consistent with the command-and-control approach. However, in the two studies reported the utility of that approach overall appears to be relatively weaker than that of a self-regulatory approach.

These findings suggest that companies have a great deal to gain by going beyond instrumental strategies of social control and focusing attention on the activation of employee values that are consistent with a self-regulatory strategy. Overall, the two studies discussed indicate the viability of such a strategy and, furthermore, the potential superiority of that strategy over the more traditional command-and-control approach. This alternative strategy leads to employee cooperation much more efficiently and effectively, since employees become self-regulatory and take the responsibility of following rules onto themselves. Further, they do so without reference to the

likelihood of being punished for wrongdoing or rewarded for acting appropriately.

The current findings also extend previous work by considering not only the social value of legitimacy but also that of moral value congruence (i.e. the match between the person's moral values and those of the organization). When employees feel that the values of their work organization are congruent with their own, their own motivation to behave morally leads them to follow organizational rules out of their intrinsic motivation to behave appropriately.

The argument advanced here is for a broader view of the employee and of the antecedents of rule-following behavior among employees. This approach looks at the influence of both instrumental and value-based motivations in shaping rule-following behavior. The results presented suggest that the consideration of both models together better explains such behavior than is possible via either model taken alone.

The view presented here includes not only the motivations traditionally studied, motivations that are linked to sanctions and incentives, but also includes social motivations for following group rules. These social motivations are linked to concerns about acting in fair ways in work settings. The case for this broader model rests on the finding that, in two different studies, corporate actors are found to be motivated in their rule-following by their social values concerning legitimacy and morality. These findings suggest that we would be better able to understand rule following behavior in work organizations, as well as other settings, if we adopted a broader model of human motivation that added an account of social motivations to our models of employee behavior.

Of course, companies are hierarchical, with rules and policies flowing down from top levels of management. If upper management

does not itself support conformity to ethical codes of conduct, as appears to have been the case in several recent corporate scandals, then the motivation to create a supportive corporate culture may not exist among managers. In that case, employees are likely to become aware that company policies are not in accord with their own values, and they will become less intrinsically motivated to follow them.

Procedures and rule following in organizational contexts

It is important to understand the factors that shape whether or not employees come to hold ethical values that encourage such adherence. Drawing upon the literature on procedural justice, I argue that employees' ethical values will be activated and will be more salient in decision making when employees evaluate their organization as being governed in procedurally just ways.

The findings of these studies suggest that work organizations can motivate their employees by exercising authority in ways that will be judged by those employees as fair. Those employees who feel that they work in a fair work environment are especially willing to take the responsibility to follow company policies upon themselves, with the obvious advantage the company does not then have to compel such behavior. Both studies show that procedural justice judgments have the potential to shape rule related behavior, and that that influence is primarily explained by the impact that procedural justice has on ethical values. These findings support the arguments of the group engagement model, which suggests that cooperation is linked to procedural justice judgments.

These findings directly support the argument that fair behavior on the part of management motivates desirable behavior by employees. Hence, it is important for companies to be concerned about acting in ways that employees will judge to be fair. By acting fairly,

companies motivate employees to both follow company policies and refrain from engaging in actions that undermine the company, actions ranging from theft to sabotage. These actions are costly to the company, undermining efficiency and effectiveness, and make clear why companies should be motivated to understand and respond to employee's feelings about what is fair.

Many organizations already recognize this strategy, and act fairly toward their employees. The findings outlined here indicate that these intuitions are correct, and support the wisdom of managing through fairness. Further, they support a particular view about what type of fairness to be concerned about. Both employees and researchers distinguish two forms of fairness: distributive and procedural. Distributive fairness is concerned with the fairness of a person's outcomes, while procedural justice is concerned about the fairness of the way that decisions are made. In particular, however, the studies I outline indicate that it is primarily a *procedurally* just workplace that encourages ethical values and rule-following behavior.

Of course, companies are hierarchical, with rules and policies flowing down from top levels of management. If upper management does not itself support the value of rule following and conformity to ethical codes of conduct, as appears to have been the case in the recent Enron scandal, then the motivation to create a supportive corporate culture may not exist among managers. In that case knowing how to create an ethical culture will be unimportant since upper management will not be motivated to act toward the objective. Further, employees are likely to become aware that company policies do not follow their own moral values, and they will become less committed to following company rules and policies. In a situation of this type the effectiveness of regulation falls on the ethical values of semiautonomous groups, such as external lawyers or accountants, whose ethical values may have been activated by their

own organizations, and/or to government regulators, who again may be motivated by their own ethical concerns.

These findings have optimistic implications for the ability of organizational authorities to encourage rule following behavior among their employees. Authorities are seldom in the position to expend excessive organizational resources on monitoring and punishing employee misbehavior. The procedural justice perspective suggests that people will comply with, and more strikingly, voluntarily defer to rules when they feel that the rules and authorities within their organization are following fair procedures when they exercise their authority and make managerial decisions. This strategy similarly promotes the view amongst employees that organizational authorities are legitimate and that the moral values of the organization correspond with their own personal moral values. What makes such a finding optimistic from an organizational point of view is that the creation and implementation of procedures that all individuals perceive as fair is not restricted in the same way that allocations of resources are. Procedural fairness is not finite, particularly since it is based on ethical criterion.

Interestingly, the procedural justice perspective is consistent with emerging trends in law and the legal regulation of business. As command and control based strategies of regulation have increasingly been questioned, government regulatory agencies have developed a variety of strategies for enlisting businesses and other "stakeholders" in the formulation and implementation of regulatory policy.

These studies suggest that one promising approach to stopping employee misbehavior, and thus the recent wave of corporate scandals that have dominated the business press, is to emphasize the ability of appropriate work cultures to motivate employees to act based upon their feelings of responsibility and obligation to both

company codes of conduct and to their own personal feelings of morality. Encouraging such motivations leads to an enhanced likelihood that companies can bring their own behavior into line with their internal principles, as well as formal laws and government regulations, even in the absence of government and corporate regulation

Agents of social control

A key concern within democracies is effectively regulating the behavior of societies' agents of social control, who have coercive power and considerable discretion over their use of that power. This can result in failures to adhere to the rules, policies, and laws dictating appropriate and lawful behavior. We can also explore the effectiveness of motivating rule adherence among law enforcement officers and soldiers by focusing upon whether they believe that organizational authorities are legitimate and/or that rules and policies are morally right or wrong.

Recent evidence of prisoner mistreatment in Iraq and of human rights violations such as the burning of prisoner's bodies in Afghanistan reflect a new manifestation of recurrent problems of inappropriate conduct by agents of social control, in this case soldiers.¹⁵³ These examples point attention to the long-term question of how societies can effectively regulate the behavior of their agents of social control.¹⁵⁴ Rules, laws, and policies exist to prohibit inappropriate conduct by those engaged in order maintenance, and those identified as engaging in such conduct can be charged, tried, and punished for it. However, a preferable strategy would be to create a framework within which such conduct was minimized, or did not occur at all.

¹⁵³ Hartle, 1989; Wakin, 1979; Wasserstrom, 1970.

¹⁵⁴ Huntington, 1957; Kelman & Hamilton, 1989; Shapiro, 1988.

The issue of regulating agents of social control is not unique to the military. Research on policing similarly documents a wide variety of ways in which law enforcement officers sometimes abuse their power by engaging in unlawful activities.¹⁵⁵ Abuses of authority occur in street stops and arrests, in detentions, in interrogations, with searches and seizures, and in cases of the use of excessive non-lethal and lethal force. These practices, whether they involve soldiers or law enforcement agents, can reflect cases of the failure to effectively implement adherence to organizational rules and regulations. These failures illustrate why civilian and upper management control is needed to regulate the conduct of those involved in order maintenance.

An important reason for the persistence of problems in preventing misconduct among those responsible for order maintenance is the nature of the situation in which social control agents work, i.e. to the nature of the tasks they perform and to the institutional structure and the dynamics that surround those engaged in these tasks.¹⁵⁶

As societies' primary formal instruments of social control, those responsible for order maintenance are given a great deal of power. They have the right to use coercion, even lethal force, for social control purposes. For example, in contrast to the elaborate legal procedures required before the state can impose the death penalty, law enforcement officers and members of the armed forces are authorized to make split second life and death decisions. On a more mundane level, the police decide whether people are stopped and questioned, whether they are arrested, and whether they receive help with problems and in emergency situations; while the armed forces exercise widespread control over the everyday lives of civil populations during times of strife. Of course, such in both

¹⁵⁵ Brown, 1981; Goldstein, 1977; Skogan & Frydl, 2004; Skolnick & Fyfe, 1993.

¹⁵⁶ Fiske, Harris, Cuddy, 2004; Milgram, 1974; Tyler, 2006a; Tyler & Blader, 2000.

groups such discretion is not total. Behavior is guided and influenced by law and public policy.

Society creates order maintenance agents to exercise social control by bringing the behavior of the people over whom they exercise authority into line with legal rules and regulations.¹⁵⁷ And, the effectiveness of the actions of those authorities shapes the degree to which societies can effectively maintain social order. But, how does society insure that the behavior of order maintenance agents themselves is consistent with the rules and laws societies creates to govern their actions? The issue of regulating those in charge of order maintenance is a long-standing challenge to societies, and is central to the relationship between societies and their various types of "armed forces." In other words, the state claims a monopoly on the use of coercive force against its citizens, and, as a result, effective governance requires the state to have ways to regulate its agents of coercion by facilitating their adherence to rules, laws, and policies governing their actions.

The problems of regulating those involved in order maintenance are rooted in a central contradiction in the organizational structures of the military and law enforcement. Those structures are heavily dominated by command and control approaches to the management of subordinates, with an emphasis upon receiving and following directives from superiors. Such authority structures depend heavily for their success upon the effective deployment of systems of surveillance and on supervision by authorities. Authority structures of this type are of course not unique to order maintenance and are also found in other types of highly structured hierarchical work environments such as factories.¹⁵⁸ They are pervasive in agencies of order maintenance.

¹⁵⁷ Tyler, 2006a, 2003; Tyler & Huo, 2002.

¹⁵⁸ Tyler & Blader, 2000.

Given their great power over others, it seems reasonable that those involved in order maintenance should work within a framework of close supervision and tight control. However, this is often not the case. The organizational problem is that while order maintenance organizations are typically organized in a hierarchical fashion, the tasks that those within them engage in often require them to exercise considerable unsupervised discretion. Because conditions vary widely across situations and individuals, and because success is viewed as being linked to the use of intuition and good judgment within a broad latitude for action, a great deal of discretion is given to decide whether to investigate suspicious activities, to determine how to manage contacts with civilians, and to decide when to intimidate or use force against others, all based upon interpretations of the exigencies of the situation and understandings of the rules, policies, and laws that govern their actions.¹⁵⁹ Such a situation is not unique to the police or soldiers. Other authorities, such as forest rangers,¹⁶⁰ also work under conditions of autonomy.

Police work, like the work of many legal authorities,¹⁶¹ inherently involves the exercise of large amounts of discretion based on the “reading of” situations. This widespread exercise of discretionary authority is basic to policing activities.¹⁶² Laws are often ambiguous and require interpretation concerning how enforcement should take place.¹⁶³ Far from being a problem, the recommendation of most policing experts is that improving police performance requires *increasing* police discretion: “Decentralizing, reducing hierarchy, granting officers more independence, and trusting in their professionalism, are the organizational reforms of choice today, not tightening up the management screws to further constrain officer

¹⁵⁹ Hawkins, 1992.

¹⁶⁰ Kaufman, 1960.

¹⁶¹ Hawkins, 1992.

¹⁶² Gottfredson & Gottfredson, 1988.

¹⁶³ Calavita, 1998; Edelman, 1990; Hawkins, 1992; Grattet & Jenness, 2005.

discretion”.¹⁶⁴ This increased discretion should be coupled with the development of aids to better decision-making and to better selection and training of officers. In sum everything about policing makes the regulation of both local and federal law enforcement agents difficult. These agents have power – they are given discretion in the use of that power; and it is difficult to consistently monitor their actions.

Of course, the need for discretion is not unique to the police. These same dynamics generally describe the situation of the members of the armed forces. While many aspects of military life are highly regimented,¹⁶⁵ performance in field settings, such as combat, involves the exercise of initiative.¹⁶⁶ In fact, it is the “emphasis on individual initiative in democratic culture” which is credited with the superior military effectiveness of democracies during wars.¹⁶⁷ Greater willingness to exercise initiative is one of two key combat advantages of democracies, the other being better leadership.¹⁶⁸ Effectiveness in highly fluid and rapidly changing situations, such as combat, requires the ability to improvise and adapt, rapidly making decisions appropriate to unique and often dangerous situations. And, as with the police, the ability to exercise initiative, when properly exercised, is a key to military effectiveness.

Hence, the structure of institutions of order maintenance involves an organizational contradiction. It involves the ability to perform tasks requiring the ability to act independently and to make discretionary tactical decisions about desirable behavior under conditions of uncertainty and novelty, but decisions about the appropriateness of actions must be taken by agents of social control who are typi-

¹⁶⁴ Skogan & Meares, 2004, 68.

¹⁶⁵ Demchek, 1991.

¹⁶⁶ Cohen & Thompson, 2001; Schmitt & Klein, 1998.

¹⁶⁷ Reiter & Stam, 2002.

¹⁶⁸ Reiter & Stam, 2002, chapter 3.

cally trained and managed in highly regimented and structured ways, that, on an everyday basis, involve acting under high levels of supervision and control. Problems arise when law enforcement agents or soldiers lack close supervision and, in that situation, exercise their discretion poorly. Since the power differentials between agents of social control and the civilians with whom they deal are enormous, and the agents carry with them the means of deploying deadly force, the consequences for civilians are often quite dire.

The issue raised by problems of the abuse of power by agents of social control is how society can encourage higher levels of rule adherence under such complex organizational conditions. Discussions of policing recognize the centrality of this concern, noting that “controlling police behavior is a management problem... [but] to date, however, little research has examined the effectiveness of managerial strategies to secure officer compliance with department policies”.¹⁶⁹ One example of prior such efforts to control police behavior is found in the area of police shootings, where management strategies are important.¹⁷⁰

This concern about how to create an effective set of regulations that will deter misconduct has again been heightened by recent public events showing both the propensity for misconduct in conflict settings, and the tremendous damage to the image of agents of social control and ultimately to the mission of order maintenance that such misconduct can cause. In the case of the army, for example, a particular advantage of democratic armies is that they are more likely to engage in ethical conduct. This has battlefield advantages, since the enemy is more likely to surrender, believing that they will receive humane treatment.¹⁷¹ Similarly, recent research on the police emphasizes the value to the police of receiving active coopera-

¹⁶⁹ Skogan & Meares, 2004, p. 78.

¹⁷⁰ Geller & Scott, 1992, chapter 5.

¹⁷¹ Reiter & Stam, 2002.

tion from the public. If the police can draw upon community cooperation, they are more effective in fighting crime.¹⁷²

Rule adherence among agents of social control

The purpose of this analysis is to address the question of how to motivate rule adherence among agents of social control. I will discuss this issue in the context of a study which uses data collected from two sources: law enforcement agents and combat soldiers.¹⁷³ The law enforcement agents were drawn from two groups: large city police officers and federal law enforcement agents. Soldiers were drawn from members of the army stationed on active duty in Iraq. Members of each group responded to anonymous questionnaires concerning their job-related judgments and behaviors.

My concern, as in prior chapters, is with the organizational characteristics shaping rule adherence within these groups. In particular, I compare the two strategies for achieving rule adherence that have already been outlined: (1) an extrinsically-oriented *command-and-control model* and (2) an intrinsically-oriented *self-regulatory model*.

Given the organizational characteristics discussed in organizations focused on law enforcement and combat, self-regulation seems particularly relevant, since it provides a basis for behavior when agents are in situations in which they are not being closely supervised. Past research on the exercise of discretion by soldiers and law enforcement agents has focused upon the issue of decision quality, i.e. the ability to manage uncertainty in stressful situations and perform well. The concern here is with the question of regulation of conduct under conditions of high discretion and low control/surveillance, i.e. organizational structures that lead agents to

¹⁷² Sampson, Raudenbush, & Earls, 1997; Skogan & Frydl, 2004.

¹⁷³ Tyler, Callahan, and Frost, 2007.

keep their behavior within the bounds dictated by the rules and policies of the organization.

And, ironically, there is support for the role of values in shaping behavior in the training programs developed within military settings.¹⁷⁴ Military research has identified moral inhibitions against killing as a major impediment to effective combat performance, and military training is designed to use psychological conditioning to overcome such inhibitions. This process involves creating a conflict between legitimacy and morality. By legitimating the cause for which fighting is occurring violence is viewed as authorized by authorities. This acts as a mechanism for overcoming moral inhibitions. When soldiers authorize others to determine the appropriate course of action, they regard their own moral values as not relevant to decisions about how to behave.¹⁷⁵ The importance placed upon deactivating moral values in military training is itself a statement about their potentially powerful influence upon soldiers' behavior.

It is already generally clear from policing research that the policies and practices of organizations have some impact on the thoughts and feelings of those involved in order maintenance and influence their job performance.¹⁷⁶ However, whether internal rules can be effective in shaping rule adherence depends upon both the situation being studied and the type of rules which are the focus of concern.¹⁷⁷ I will consider a particular set of organizational characteristics expected based upon research findings in other areas to shape rule adherence – those linked to the procedural justice of the organization.

¹⁷⁴ Grossman, 1995.

¹⁷⁵ Kelman & Hamilton, 1989.

¹⁷⁶ Crank & Longworthy, 1992; Kappeler, Sluder, & Alpert, 1994; Wyatt and Gal, 1990.

¹⁷⁷ Edelman & Suchman, 1997.

Within work settings it has been shown that employees are more likely to view as legitimate and to comply with workplace rules and policies if they view the organizations within which they work as exercising their authority via fair procedures. The *self-regulatory model* operates via the activation of values and feelings of responsibility toward their company. This approach is based upon a psychological model suggesting that an organizational environment characterized by fair procedures will activate strong employee organizational identification, thus leading them to engage in desirable workplace behaviors and to hold positive attitudes towards their work organizations.

The findings of procedural justice research lead us to hypothesize that procedural justice judgments will impact: 1) views about the legitimacy of corporate rules, policies, and authorities, 2) perceptions that their organization's values are consistent with one's own, and 3) rule adherence behavior. In other words, fair organizational procedures and processes are hypothesized to foster a sense that corporate authorities are legitimate and that the organization itself possesses moral values similar to those of the individual. This activates internal motivations, and agents more voluntarily follow rules and policies, i.e. they become self-regulatory.

The concern of this study is with the possibility that law enforcement agents and soldiers are influenced by procedural justice judgments, then there is an organizational framework through which self-regulatory approaches can be developed.

The results of this study confirm the hypothesized pattern of results. They indicate that self-regulatory variables about legitimacy and value congruence both significantly shaped rule-following. Judgments about the legitimacy of organizational authorities significantly impacted following rules and deferring to policies among law enforcement officers, and all three forms of rule following

among soldiers. Moral value congruence was significantly related to following job requirements and deferring to policies among law enforcement agents and members of the military.

What shapes values?: The role of procedural justice

The key hypothesis drawn from the prior literature is that assessments of the procedural justice of the organizations within which order maintenance agents work would significantly influence the degree to which those agents followed rules and policies in the workplace. In other words, like the members of the general public, who are widely found to react to the procedural justice they experience when dealing with legal authorities,¹⁷⁸ order maintenance agents could react to the procedural justice they experience when dealing with their superiors and within their own organizations. The results provide support for the procedural justice argument. The assessments of legitimacy made by both law enforcement agents and soldiers are found to be significantly influenced by procedural justice. Further, the degree to which procedural justice was judged to characterize their own organization was linked to the degree to which they evaluated the policies of their organization as consistent with their own moral values.

The congruence in the findings across the two samples is striking. While both law enforcement agents and soldiers are engaged in order maintenance, and both operate in similarly hierarchical environments, many aspects of their jobs were different. In particular, law enforcement agents deal with communities that are part of their own society, while the soldiers involved were involved in an occupation of another society and were dealing with civilians who were “foreigners.” Yet, the psychological dynamics of the influence

¹⁷⁸ Tyler & Huo, 2002.

of legitimacy and moral value congruence upon rule adherence were found to be very similar.

The analysis of the meaning of procedural justice drew upon the four component model outlined by Blader and Tyler (2003a, 2003b). The dependent variable in this analysis was procedural justice. The independent variables were the four aspects of procedural justice; distributive fairness; and demographic controls. Procedural justice is found to be shaped by the four procedural elements and by distributive justice.

The results from both the law enforcement agents and the soldiers confirm my central prediction that the self-regulatory approach represents a viable approach to fostering rule adherence among agents of social control who are involved in order maintenance activities. The social value judgments made regarding their organizations, embodied in their perceptions of the legitimacy of organizational authorities and the perceived congruence of their personal values with those of the organization shaped rule and policy adherence. This was true across the three types of rule following behavior examined – following job requirements; adhering to organizational rules; and voluntarily deferring to organizational policies. These results confirm that the self-regulatory strategy is a viable approach to attaining rule adherence.

These results support the argument that social value judgments shape behavior, and in particular rule-following behavior. Those judgments are a major motivation leading to adherence with organizational policies and rules. These results suggest that one promising way to bring the behavior of law enforcement agents and members of the military into line with codes of conduct is to tap into their social values – i.e. their motivation to defer to legitimate rules and authorities and to engage in actions congruent with their own moral values. To gain acceptance for rules and policies, or-

ganizations should activate employee values. These values are central to the self-regulatory strategy for achieving compliance.

Of course, the activation of values is not the only way to influence rule-related behavior. As is the practice in many organizations, organizational efforts to monitor and sanction/reward behavior may likewise motivate the following of organizational policies, consistent with the command-and-control approach. However, in the data analyzed here, the utility of that approach overall appears to be weaker than that of a self-regulatory approach. Although there were significant influences of the command-and-control approach in some instances, these influences were typically secondary in magnitude to the influence of the variables in the self-regulatory approach. Hence, we suggest that self-regulatory approaches are more than just another approach to regulation, they are a more effective approach.

These findings suggest that both law enforcement and military organizations have a great deal to gain by going beyond instrumental strategies of social control and focusing attention on the activation of values that are consistent with a self-regulatory strategy. Overall, the results presented here indicate the viability of such a strategy and, furthermore, the potential superiority of that strategy over the more traditional command-and-control approach. This alternative strategy leads to cooperation much more efficiently and effectively, since those in the organization become self-regulatory and take the responsibility of following rules onto themselves. Further, they do so without reference to the likelihood of being punished for wrongdoing or rewarded for acting appropriately.

The use of self-regulatory approaches is also important because it addresses the organizational issues outlined. If it is important for those involved in order maintenance to be able to act with discretion, then the solution to the problem of rule adherence must work

within a discretionary environment. Because values are an aspect of self-regulation, they work in such an environment. If agents are following rules based upon their internal values, their behavior should continue to be consistent with the rules when they are not being controlled by direct surveillance by superiors.

As might be expected, those involved in training order maintenance agents to some degree already recognize the potential importance of value based approaches. For example, the army leadership training manual makes values a core part of leadership training and includes values such as respect and integrity.¹⁷⁹ That manual illustrates integrity by pointing approvingly to an incident in which a soldier in Viet Nam protects civilians from his own comrades by threat of force (p. 2-10). On the other hand, another manual "Leaders' manual for combat stress control"¹⁸⁰ emphasizes the need to prevent misconduct, but does not discuss the role of values with either soldiers or officers. Rather, it focuses upon the importance of high unit cohesion and "competence, courage, candor, and commitment" among leaders (Chapter 4). This alternative focus highlights the potential value to organizations of an emphasis upon the "sense of mission."

Overall, therefore, the model is most effective in explaining the actions of soldiers, and less effective in explaining the actions of federal law enforcement agents. Significant relationships are found among all three groups, but behavior is best explained among soldiers, and least well explained among Federal agents. When the three groups are considered as a continuum, the model is found to be most effective in those settings in which those involved are the most likely to confront issues of regulating their use of violence. This problem is most central to the mission of soldiers, is an eve-

¹⁷⁹ US Army Field Manual 22-100, 1999.

¹⁸⁰ US Army Field Manual 22-51, 1994.

ryday issue among police officers, and comes up most selectively among Federal agents who are involved in more specialized law enforcement tasks. Of course, it needs to be acknowledged that many variables distinguish soldiers, local police officers, and federal agents, so a clearer answer to this question requires further research.

Earlier studies in the area of everyday law-related behavior highlight the important role of social values in encouraging citizen compliance with the law.¹⁸¹ It has been shown that people are more likely to comply with laws when they feel that legal authorities are legitimate and ought to be obeyed. The findings outlined here support this argument, and extend it to a different arena – the agents responsible for maintaining social control and their relationship to the organization in which they work. This extension is especially striking since the work arena is one in which the influence of values has traditionally been downplayed in favor of alternative instrumental or “rational” approaches.

The current findings also extend previous work by considering not only the social value of legitimacy but also that of moral value congruence (i.e. the match between the person’s moral values and those of the organization). When those within an organization feel that the values of their organization are congruent with their own, their own motivation to behave morally leads them to follow organizational rules out of their intrinsic motivation to behave appropriately. These findings parallel findings in work settings, which show that employees’ rule following is shaped by their views about the congruence of organizational policies with their personal moral values.¹⁸²

¹⁸¹ Tyler, 2006a.

¹⁸² Tyler & Blader, 2005.

In addition to the empirical support for the utility of the self-regulatory strategy reported here, such an approach has additional benefits over a command-and-control strategy. For instance, it prevents organizations from expending resources on creating and maintaining credible systems of surveillance to enforce rules. These problems are typical of any efforts to regulate conduct using incentive or sanction-based strategies. Exacerbating this problem, such strategies actually encourage people to hide their behavior and thus make it necessary to have especially comprehensive and costly surveillance systems.

A core issue within organizational psychology is the distinction between selection and training. The selection approach suggests that the key to organizational viability is to hire people with values that fit the organization. The training approach argues that the experiences people have within the organization can shape their attitudes, values, and behaviors. Those experiences can potentially develop from their general experiences with the structures and processes of the organization, or can result from particular training programs. The results outlined here support the argument that the general structures and processes of organizations shape the people within those organizations.

The findings suggest the importance of one particular aspect of organizations, the justice of their rules and procedures. Consistent with prior findings of the literature on procedural justice, rule following and, in particular, deference to rules, is linked to the fairness through which authorities act. However, in contrast to the many studies showing procedural justice effects among the general public,¹⁸³ this study shows that the manner in which agents of social control experience their own work organizations shapes their behavior in relationship to social rules. This study is more in line

¹⁸³ Tyler, 2006a; Tyler and Huo, 2002.

with research on the behavior of employees in work settings, which also finds that procedural justice motivates rule adherence among private sector employees.¹⁸⁴

This study explores adherence to rules. However, it does not differentiate between rules pertaining to dealings with authorities about job conditions and rules about how to deal with “outsiders” (i.e. community residents or civilians). It could be that procedural justice motivates agents to be better employees, i.e. work harder, do a better job, etc. It could also be that procedural justice motivates agents to treat community residents or suspects with dignity, not to use excessive force, etc. Further studies need to clearly distinguish these two issues, and measure each separately

The findings outlined suggest a clear message about how to minimize abuses of authority among agents of social control. When agents experience their own working conditions as defined by principles of procedural justice, i.e. when they experience justice on the job from their superiors and work organization, they accept the values of their organization and follow its rules. Further, they are more likely to accept those rules voluntarily and indicate that they follow them even when they think they are unlikely to be caught and punished for rule breaking behavior. Both the fairness of interpersonal treatment by higher authorities and the fairness of decision-making influence such procedural justice judgments.

Consider two approaches that authorities might potentially take to try to secure rule adherence. One approach would be to stress the punishments associated with being caught engaging in rule breaking, or the benefits of rule adherence in terms of promotion. A second approach would be to focus on creating fair procedures within the organization, so that people feel that decision making

follows just procedures, and that people are treated with dignity and respect. These results clearly point to the value of the second approach.

The argument advanced here is for a broader view of those responsible for maintaining social control and of the antecedents of rule-following behavior among those agents. This approach looks at the influence of both instrumental and value-based motivations in shaping rule-following behavior. The results presented suggest that the consideration of both models together better explains such behavior than is possible via either model taken alone.

The view presented here includes not only the motivations traditionally studied, motivations that are linked to sanctions and incentives, but also includes social motivations for following group rules. These social motivations are linked to concerns about acting in fair ways in work settings. The case for this broader model rests on the finding that, in two different studies, employees are found to be motivated in their rule-following by their social values concerning legitimacy and morality. These findings suggest that we would be better able to understand rule following behavior in work organizations, as well as other settings, if we adopted a broader model of human motivation that added an account of social motivations to our models of behavior.

Within the context of this message it is especially important to note the breadth of the findings. The first setting studied involved both high level corporate banking employees and a broad sample of workers. The second setting considered agents of social control – police officers; federal agents; and members of the armed forces. In all of these contexts values mattered, and procedural justice shaped values.

¹⁸⁴ Tyler and Blader, 2000.

VIII. CONCLUSION AND IMPLICATIONS

Although his writing predates the advent of modern scientific methods, the tenor of his work would suggest that Montesquieu would have been very much at home in a discussion of the issues that I have raised today. Montesquieu did his best with the type of information that he had available to him – chiefly comparative observations of the different societies of his day. Further, like modern organizational theorists, he used this empirical evidence as a basis for organizational design suggestions. Montesquieu identified core organizational conditions – for example, climate – and related those to the nature of the government that would best fit a particular society. Hence, if he were alive today Montesquieu would no doubt also consider available scientific evidence.

So what does such evidence suggest? In my opinion it argues for the value of a new perspective within which to think about the role of motivation in law-related settings. This new approach differs both in the type of behaviors it seeks to motivate and in the way motivation is conceptualized.

Most importantly there is a change in the type of behavior involved. When I wrote the first edition of *Why People Obey the Law*, which was published in 1990, the prevailing image of what was wanted from citizens was limited. Compliance was the focus of concern – and fit well with the idea of obedience. Increasingly, however, it has been recognized that compliance alone is an inadequate basis for an effective legal system. First, as noted, it is hard to effectively implement compliance strategies, which are expensive and produce weak effects. The problems with such strategies have been manifested historically in efforts to regulate drinking, drug use, and sexual behavior. Today they are also manifested in efforts to

control illegal copying of music and movies, as well as perennial issues such as paying taxes and fighting in wars.¹⁸⁵

It is increasingly recognized that legal authorities also need the active cooperation of members of the community to effectively regulate communities by reporting crimes and cooperating in policing neighborhoods.¹⁸⁶ Hence, an important aspect of the study of law involves seeking to understand the factors shaping cooperation with law and legal authorities. Studies of public policy are concerned with developing social policies that can effectively coordinate the actions of people within communities. Studies of public policy are concerned with developing social policies that can effectively coordinate the actions of people within communities. Such efforts involve creating a procedure for developing and implementing policies and policy decisions, whether decisions about whether to go to war or whether to site a nuclear power plant. The key to success in such efforts is to create policies that all of the people within a community are motivated to accept, i.e. to be able to gain rule adherence.

Government regulatory agencies have developed a variety of strategies for enlisting businesses and other “stakeholders” in the formulation and implementation of regulatory policy. These include negotiation to reach consensus on administrative regulations,¹⁸⁷ cooperative arrangements for delivering social services,¹⁸⁸ and joint efforts to manage wildlife and wild lands.¹⁸⁹ These policies decentralize power to “enable citizens and other actors to utilize their local knowledge to fit solutions to their individual circumstances.”¹⁹⁰

¹⁸⁵ Levi, 1988, 1997.

¹⁸⁶ Tyler & Huo, 2002.

¹⁸⁷ Coglianese, 1997.

¹⁸⁸ Stewart, 2003.

¹⁸⁹ Karkkainen, 2002; Lin, 1996.

¹⁹⁰ Dorf & Sabel, 1998, p. 267.

All of these efforts involve procedures for decision-making that embody the values of participation, neutrality, and acknowledging the rights, needs and concerns of people involved in the decision. This does not mean that they involve wide participation, but rather that they reflect the values inherent in social motivation based perspectives. Such efforts involve creating a procedure for developing and implementing policies and policy decisions, whether decisions about whether to go to war or whether to site a nuclear power plant. The key to success in such efforts is to create policies that all of the people within a community are motivated to accept, i.e. to be able to gain rule adherence.

Hence, the first goal is to shift from compliance to voluntary deference. The advantage is that people then follow policies willingly, and surveillance costs become low. Further, people are active participants in creating and maintaining conditions of social order. This change is intertwined with a focus on social values – legitimacy and moral value congruence – as the key antecedents. The emphasis upon instrumental motivations is not central.

Ironically, although the evidence today is more compelling than that which Montesquieu had available to him, it would be hard to argue that modern social science is as effective and influential as Montesquieu in shaping the design of social institutions. Hence, it is clear that we need to also develop better institutional mechanisms for the interface of law and social science.

Organizational design

Legal institutions are designed based upon the assumption that behavior is shaped by the risk of sanctioning. As a result, there is a fundamental misalignment of the organization, in this case the legal system, and models of motivation, leading the system to be less efficient and effective than might potentially be the case.

One approach that might potentially be taken to the limits outlined is to shore up the effectiveness of instrumental approaches. A strategy that is often used is to increase the magnitude of gains and losses. For example, law enforcement authorities often increase the severity of punishment for wrongdoing. Such strategies are shown by research to be ineffective, since the probability of punishment has a more important influence upon wrongdoing than does the severity of punishment. However, this implementation model may be viewed by authorities as desirable because, like the instrumental approach itself, increasing severity is something that is under the control of authorities. To increase the likelihood of punishment, authorities would need to be able to deploy more resources, which they may not be able to do.

Another approach is to more effectively deploy available resources. Again, using the example of deterring wrongdoing, police resources can be deployed in response to crime risks in a more direct manner than is commonly the case.¹⁹¹ Rather than deploying the police based upon political or economic considerations, they can be deployed based upon actual crime rates. Similarly, management models such as pay for performance may increase productivity by more directly linking productivity and the delivery of incentives. While it might seem obvious that that linkage would exist, one common critique of CEO compensation is that it is not linked to company performance, with social factors such as connections between the CEO and member of the board better accounting for CEO compensation.

The approach to increasing the motivation to cooperate taken in this volume is not to strengthen instrumental approaches, but instead to broaden the conception of what motivates employees. By including social motivations in the overall motivational framework,

¹⁹¹ Tyler, 2003.

the ability to explain why people cooperate is substantially enhanced. The implication for organizational design is that there needs to be a focus on creating the organizational conditions conducive to promoting social motivations.

This argument is based upon the distinction in utility functions between expectancy and value. The judgment and decision making literature has made clear in the last several decades that there is a great deal to be gained by exploring the individual's thought processes – i.e. by developing the expectancy aspect of utility.

This volume suggests that there is a similar benefit to developing the second aspect of the utility model – our understanding of what people value, i.e. of creating an expanded version of what it is that motivates people in social settings. While they are motivated by material incentives, such as opportunities for pay and promotion, and seek to avoid losses, such as sanctions for rule breaking, people are motivated by a broader set of issues, issues loosely collected here and labeled social motivations.

Social motivations are distinct from instrumental motivations, conceptually, and as a consequence they have distinct strengths and weaknesses. A distinct strength is, as has been noted, that they do not require organizational authorities to possess the ability to provide incentives for desired behavior, or to be able to create and maintain a credible system of sanctions. At all times groups benefit from having more resources available that can be directed toward long-term group goals. If everyday group actions are shaped by self-regulating motivations, groups have more discretionary resources.

And, as the findings of this study make clear, social motivations are important because they are more powerful and more likely to produce changes in cooperative behavior than are instrumental motivations. Hence, social motivations are both more powerful and less

costly than are incentives and sanctions. Of course, this does not mean that social motivations can be immediately and automatically deployed in all situations.

A weakness of social motivations is that they cannot be quickly activated within any social context. A CEO with a million dollar war chest can create an incentive system to motivate behavior in desired directions overnight. Conversely, a city can shift its police patrols around to vary the nature of the threat faced by community residents. Such flexibility is a major advantage of instrumental system. Social motivations must be developed over time, as the culture of an organization is created. Hence, a long-term strategy is needed to build an organization based upon social motivations.

A strategy based upon social motivation also has the disadvantage of taking control away from those at the top of the social hierarchy. If a group relies on voluntary cooperation, its leaders need to focus upon the attitudes and values of the people in the group. For example, they have to create work that people experience as exciting. Further, they have to pursue policies that accord with employee's moral values. These aspects of social motivation create constraints upon the actions of leaders.

It is natural that leaders would prefer a strategy in which they are the focus of attention, irrespective of its effectiveness, to one in which they focus their attention upon employees. Yet, within business organizations, a focus on the customer is a widely institutionalized value. Similarly, the concept underlying democratic processes is that, within communities, policies ought to be a reflection of the values of the members of those communities. Hence, it is hardly a radical suggestion that organizations benefit when they develop their policies and practices in consultative ways that involve all of the relevant "stakeholders", including leaders, group members, and external clients such as customers.

Aspects of procedural justice feed directly into the need to make group policies and practices consistent with the attitudes and values of group members. Participatory decision making and consultation at all levels are mechanisms through which people's views are represented.

Ironically, those constraints may often have additional value for groups. The era of corporate excess makes clear that, when unchecked, the power of those in high management does not always end up serving the interests of the company. Hence, the need to be accountable to others within the organization may have valuable benefits for the group and may check the tendency of leaders to engage in unwise actions. Just as "checks and balances" is frequently held out as one of the primary desirable design features of American government, the balancing of policies and practices among stakeholders has the benefit of restricting any tendency toward excesses.

Cooperation in the Lewinian tradition

Cooperation, as studied here, is conceptualized in the tradition of motivational research begun by Lewin¹⁹² and central to the Research Center for Group Dynamics inspired by that research. In Lewin's classic studies the focus of concern is the behavior of groups of boys. Various types of behavior are considered, including the performance of group tasks (making theatrical masks) and aggression toward others in the group. In the studies, leaders sought to encourage/discourage these behaviors using a variety of styles of motivation, including authoritarian and democratic leadership. Lewin focused his own attention primarily upon issues of aggression and scapegoating, while the focus here will be upon the performance of group tasks. The focus on group performance carried

¹⁹² Gold, 1999.

forward as an important aspect of the agenda of the Center for Group Dynamics inspired by the work of Lewin and his students.

A key experimental distinction introduced in the Lewinian research approach is between behavior while the leader is present and behavior when the leader is absent. It is found that, when the leader of an autocratic group leaves the room, the behavior of the boys changes. When the leader is democratic, this change does not occur. Lewin argues that democratic leadership, which is participatory, engages the internal motivations of the boys, so their behavior is no longer linked to the presence of the external forces represented by the leader. Instead, behavior flows from internal motivations. Further, and central to Lewin's concerns, the boys are not suppressing negative feelings in the presence of the Democratic leader, so there is less motivation for them to be aggressive toward other boys when the leader leaves.

The first aspect of this Lewinian approach is the effort in field theory to identify two sources of motivation. The first is external, and reflects the contingencies in the environment. Lewin recognized that the environment shapes behavior by altering the costs and benefits associated with various types of behavior. The second type of behavior is internal, and is shaped by the traits, values and attitudes of the person. These are the motivational forces developing from sources within the person and reflecting their own desires. When external contingencies are strong, individual differences in behavior do not emerge. Conversely, in the absence of strong external pressures, behavior reflects people's attitudes and values.

As is the case in the Lewinian approach, the argument here is that the engagement of internal, or social motivations, is especially key when the type of cooperation of concern is behavior that will occur outside of the surveillance of authorities. Such behavior is "voluntary" in the sense that it is not a reflection of the contingencies of

the external environment. The leader is not present and cannot either reward or punish behavior. Hence, the behavior which occurs is a more direct reflection of the internal attitudes and values of the boys.

This analysis is broadly framed using the field theory model in two ways. First, as it true with the work of Lewin, this analysis of people's actions views employee behavior as a reflection of two factors: external (instrumental) and internal (social) motivations. Second, and again as articulated by Lewin, the key issue is the mix of these motivations. Finally, this analysis distinguishes between those behaviors that are and those that are not voluntary, i.e. behaviors that do and do not occur in settings in which behavior is being observed and those who engage in it are aware that incentives and sanctions will be shaped by their actions.

Societal implications

The Lewinian approach to studying social settings developed following the Second World War and was directly influenced by the contrast between authoritarian and democratic styles of group leadership. In the aftermath of that war the dangers of autocratic leadership were apparent, and Lewin and his group of researchers sought to emphasize the virtues of democracy. The core such virtue is the ability to motivate voluntary action because people are psychologically involved in groups and act based upon their own internal attitudes and values to assist those groups.

An argument in favor of the virtues of voluntary engagement does not fit well with the emphasis upon command-and-control strategies that is widely found within management settings, nor with the dominance of the deterrence approach to social control in the area of law. Hence, one benefit that is derived from adopting the broader framework of motivation articulated here is that it draws atten-

tion to the benefits of engaging people in groups in ways that support voluntary cooperation.

Such an argument fits well with the increasing recognition that groups, organizations, and communities benefit from more active engagement than can be motivated by incentives and sanctions. Within law and public policy the virtues of citizen participation are recognized, while in political science the importance of social capital is noted. In management many studies focus on the need for extra-role behavior that moves beyond doing one's job. And, in education the centrality of intrinsic motivation to active learning is a key issue. All of these literatures point to the value of having a broader conception of motivation.

Although the general point of this volume is to argue for the value of focusing on social motivations each aspect of the social motivations considered can be treated as distinct, since each is making a distinct contribution to motivation.

Images of human nature

The key argument in this volume is that people are motivated by social motivations. This message emerges clearly from the analyses reported. Across variations in the form of the analysis social motivations are consistently found to have an influence upon cooperation, intention to remain in the group, and well-being. Further, this influence is typically larger in magnitude than is the influence of instrumental influences. As a consequence, the effective design of organizations will be enhanced if that design is based upon an awareness of the organizational factors encouraging social motivations.

The value of social motivations emerges across the forms of cooperation considered. However, the value of social motivation is particularly relevant given the need for voluntary cooperation. Within

the study of law and regulation, for example, it has been increasingly recognized that we want more from people than compliance. We also want active cooperation, with people both working with the police and with others in their community to fight crime. In management, the virtues of voluntary extra-role behavior are touted in firms ranging from Silicon value start-ups to large corporations such as Apple and Microsoft. As work becomes less physical and more intellectual and social in nature it is increasingly important that people move beyond simply doing their jobs to being creative and innovative in work settings. And, in communities we recognize the need for people to work actively with others to develop consensual community based policies and to create the social capital in communities to implement them. Given the problems that authorities are seeking to solve in modern organizations social motivations are especially central, because those problems require voluntary cooperation on the part of the members of groups, organizations, and communities.

Montesquieu

Although I frame my discussion in terms of the theories of Lewin, there are ways in which the earlier ideas of Montesquieu are echoed in this later work. Montesquieu talked about the human passions that activate governments: virtue in democracies; honor in monarchies; and fear in despotic states.¹⁹³ In the case of democracy, society cannot flourish without virtue, "the love of one's country, and the preference of the interest of one's country to one's self-interest. It involves the love of what one's country stands for: equality and frugality in the democratic state".¹⁹⁴ Essentially, virtue means the spirit of moral goodness, patriotism, and altruism among citizens.

¹⁹³ Shackleton, 1961.

¹⁹⁴ Shackleton, p. 273.

It is clearly important not to oversimplify the complex thought of Montesquieu, or to suggest more correspondence between his ideas, which reflect the thinking of the era of the American and French revolutions, and the ideas expressed here than is warranted. Nonetheless, it is striking that he is placing the central role for the success of democratic states in the loyalty of the citizenry to values, such as morality (“moral goodness”) and legitimacy (“patriotism”), values which motivate people to act beyond their own self-interest. In this sense, the argument being made here is very much in the spirit of Montesquieu.

What is most striking, and certainly the topic for another discussion, is how much current thinking about human nature and governance have departed from these early ideas. Rational choice models view the citizen as a self-interested actor, who weighs both their actions and their electoral choices through a filter of personal gain and loss. Certainly, the role of moral and social values is minimized in contemporary discourse, and people are not thought of as being motivated by moral goodness and patriotism, so much as by material self-interest.

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