Legitimacy and Criminal Justice: The Benefits of Self-Regulation

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In this lecture I argue for the value of a self-regulatory approach to law and criminal justice. I do so by first describing and critiquing the dominant approach to regulation in use today: deterrence. I suggest that in practice this model is costly and minimally effective in securing compliance with the law and motivating the acceptance of decisions made by police officers and judges. I then outline a different, self-regulatory model which focuses on engaging people's values as a basis for motivating voluntary deference to the law. I review empirical research suggesting that this strategy is both viable and more desirable than current sanction-based approaches. My argument is that this approach is particularly important when the goal is voluntary compliance with the law and/or willing cooperation with legal authorities.

The traditional objective of the law and of the actions of legal authorities is to gain public compliance with the law. This includes compliance in the context of the particular decisions made by legal authorities such as judges and police officers and compliance with the law in everyday life. In both cases, a key societal objective is to bring people's behavior in line with the law (Tyler 2006d). And, in both cases, public compliance cannot be taken for granted.

The problems involved in obtaining compliance with the law in everyday life are illustrated through compliance issues involving a wide variety of behaviors, ranging from traffic laws (Tyler 2006d) to drug laws (MacCoun 1993), illegal immigration (Cornelius and Salehyan 2007), and the payment of taxes (Braithwaite 2003; Kornhauser 2007; McGraw and Scholz 1991; Wenzel 2006). In each case, while most people comply with the law 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 (Schultz 2006).

Similar problems arise with the decisions of legal authorities. Studies of personal encounters with the police demonstrate that people often resist, and even

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defy legal and judicial orders (Mastrofski, Snipes, and Supina 1996; Sherman 1993; Terrill 2001), and compliance can never be assumed. On the contrary, that ability to manage encounters with members of the public without provoking conflict and resistance is considered to be a core competency issue for police officers. As Mastrofski, Snipes, and Supina (1996) note, "Although deference to police authority 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" (272). Based upon observational data, these authors estimate that the general noncompliance rate is around 22% (281, Table 1).

The willingness of litigants to accept the decisions made by judges is also a long-standing issue in the courts. One major motivation for the alternative dispute resolution movement which uses non-adjudicative forums such as mediation instead of traditional adjudication is to find a way to increase the willingness of involved parties to accept the decisions made by third-party authorities. Alternative procedures do so by replacing judges with mediators and adjudication with a more informal and cooperative problem solving procedure (Tyler 1989). Within all types of adjudicative settings, judges have struggled to find ways to make decisions that are acceptable to the parties who bring cases into court. An illustration of the type of cases that are particularly likely to raise acceptance issues is decisions about child custody and child support (Bryan 2006). With such cases, it is important to make decisions that will be willingly followed by both fathers and mothers and that will, to the degree possible, create positive post-separation dynamics in which both parents take responsibility for supporting their children financial and emotionally (Bryan 2006; Dillon and Emery 1996; Emery, Matthews, and Kitzmann 1994; Kitzmann and Emery 1993). Hence, family law cases involving child custody and child support have been a particular focus of efforts to find ways to create acceptable decisions.

Irrespective of the type of case involved, the traditional means of obtaining compliance is via social control, i.e., by seeking to deter rule-breaking by threatening to punish wrongdoing. It is argued that the fear of possible future punishment leads to compliance with the law. Risk calculations are potentially shaped by both the anticipated likelihood of punishment and by judgments about its severity. Of the two, research consistently suggests that it is the likelihood of punishment that is particularly important in shaping behavior, so that issue will be my primary focus. Such deterrence approaches to compliance are currently the dominant model of motivation within the American criminal justice system (Blumstein, Cohen, and Nagin 1978; Cullen, et al. 2002; MacKenzie 2002; May 2004; Nagin 1998; Petersilia 2003).

In this paper I will argue for a self-regulatory approach. This approach is based upon several arguments, each of which will be addressed and supported empirically in this paper. First we need to change our goals regarding the behavior we want from the members of our society. The second is that this change in

behavioral objectives leads to a change in the tactics that we should employ to obtain our goals.

I will also argue that there are tremendous benefits to shifting our focus toward voluntary acceptance of decisions and, beyond that, toward cooperation with legal authorities. And, I will suggest that such a shift in behavioral focus requires a shift in motivational strategy away from deterrence and toward the creation and activation of values—i.e., toward a self-regulatory approach to generating law-abiding behavior. The first aspect of such a model is the argument that people are motivated by their values. The particular value I will focus on is legitimacy (for a broader discussion of social motivations, see Tyler, forthcoming).

I. A CRITIQUE OF DETERRENCE

Before discussing the utility of regulation based upon values, let me comment upon the drawbacks of the deterrence model. Deterrence is a costly, but at best minimally effective approach to promoting compliance with the law. The high costs of deterrence arise because authorities have to create and maintain a credible threat of punishment for wrongdoing. As I have already noted, studies suggest that people are most strongly influenced by the probability of punishment, not the severity of punishment. Hence, a strategy focused upon severely punishing a small group of offenders, for example, through the use of the death penalty, is not particularly effective. To be effective, the authorities need to be able to credibly detect wrongdoing, which necessarily requires the deployment of resources for surveillance. And, because people dislike punishment, they hide their offending behavior, thus requiring especially strong efforts to identify and punish wrongdoers. The authorities, in other words, must seek out those who are disobeying the law, while the offenders actively work to disguise their behavior.

Given these problems, it is not surprising that studies which empirically test the deterrence model typically find either that deterrence effects cannot be reliably detected or that, when they are detected, their magnitude is small (MacCoun 1993; MacKenzie 2002; Paternoster 1987, 1989; Paternoster and Iovanni 1986; Paternoster, et al. 1983; Tyler 2006). Targeted efforts to lower illegal behaviors ranging from driving while drunk (Ross 1982) to downloading music (Schultz 2006) similarly suggest that it is difficult to lower the rate of illegal behavior using the threat of punishment. All in all, the relationship between crime/deviance and variables specified by deterrence theory is "modest to negligible" (Pratt, et al. 2006, 383).

The delivery of punishments is also a strategy of uncertain effectiveness. This is true of the practice of widespread punishment for minor crimes ("the broken windows" approach to policing), which is not found to lower the rate of crime (Harcourt 2001; Harcourt and Ludwig 2006). More broadly, variations in the severity of punishment are not found to be related to the rate of reoffending (Lipsey and Cullen 2007; Lynch and Sabol 1997). And the voluminous literature on the deterrence effects of the death penalty, whose function is not to deter the

offender but to deter others, suggests after decades of research that "the relationship between executions and murders still lacks clear proof" (Weisberg 2005, 163).

What are the costs of a deterrence approach? One cost is the need for the massive deployment of law enforcement efforts to produce a credible threat of punishment. Another is the enormous cost of creating and maintaining a system of incarceration to make punishment credible (The PEW Center on the States 2008). As a consequence, the system is always influenced by the resource limits of society (Meares 2000, 401). The United States, which has one of the world's largest prison systems, is currently experiencing the difficulties of having to fund them. These costs are so high that U.S. Senators have recently called for a National Criminal Justice Commission to address problems in the criminal justice system (*New York Times*, January 1, 2009).

The central negative consequence of deterrence approaches is that they define people's relationship to law and legal authorities as one of risk and punishment. This lessens people's focus upon other aspects of their connection to society, such as shared values and concerns, and encourages people to act in ways that are linked to personal gains and losses. An additional negative consequence of deterrence approaches is that because people associate law and legal authorities with punishment, the instrumental relationship between the public and the legal system is antagonistic. People become more likely to resist and avoid legal authorities and less likely to cooperate with them (Tyler, forthcoming).

If, as is being argued, the deterrence approach is costly, minimally effective, and laden with negative side effects, why does it persist? My suggestion is that legal authorities accept this system because they do not see a better alternative. As a consequence, they live with a high-cost, minimum-impact approach and deal with its side effects.

One reason that legal authorities believe that there are no alternatives to deterrence is because of the conceptual framework used in research on compliance. Most studies approach this issue by defining the issue as whether or not deterrence "works." Typically, this question then becomes whether it is possible to identify an effect of deterrence variables that is significantly different than zero. If such an effect is found, then researchers conclude that deterrence "works." This approach has several problems. The first is that it does not consider how strongly deterrence works, i.e., it does not examine the magnitude of the effects observed (Ziliak and McCloskey 2008). Second, it does not compare the effectiveness of deterrence to alternative models and approaches. As a consequence, it does not involve a cost-benefit analysis in which the gains and costs of differing policies are compared.

Because of the widespread availability of public records, there is a large literature examining the relationship between the risk of punishment, the severity of punishment and criminal behavior. It is this literature that yields the conclusions already outlined and which has generated a widespread effort to identify the circumstances under which deterrence is effective, as well as calibrating the magnitude of deterrence effects. There is also a parallel literature

on perceptual issues and deterrence that examines the influence of the perceived risk of punishment.

What is often missing in these studies is an effort to compare deterrence to other factors, such as values. Tyler (2006d), for example, compared the risk of deterrence to that of legitimacy and moral value congruence and found that both values were stronger predictors of compliance than estimated risk. In other words, when alternative value-based models are compared to deterrence, the alternative models are found to be stronger. This is not, of course, a new finding. Consider the experimental studies of tax compliance conducted in the 1960s, which showed that appeals to values were more effective than were threats of punishment in motivating compliance (Schwartz and Orleans 1967).

Further, studies find that results "consistent with a large body of research that shows that when other inhibitions are strong (such as those provided by one's moral beliefs), the deterrent effect of sanction threats are irrelevant [to whether adolescents and young adults engage in criminal behavior]" (Wright, et al. 2004, 206). In other words, when people have values, such as legitimacy, risk calculations may become less relevant, or even irrelevant, to their behavioral calculations. Tyler (2005) similarly found that values and risk perceptions interacted in shaping people's everyday law-related behavior, with risk calculations assuming a smaller role in behavioral choices when values were important.

II. SELF-REGULATION THROUGH VALUES

The goal in this article is to articulate a new approach to regulation. This approach draws upon the psychology of self-regulation. In particular, it focuses upon legitimacy. The focus of the analysis is on demonstrating that it is possible to shift from a deterrence model to a system of self-regulation based upon values.

The findings I will present suggest that even if our goal is simply to achieve compliance with the law, a value-based model is as or more effective than the deterrence model. However, the power of a value-based model becomes clearest when we focus upon the types of behaviors that I will argue should be of central importance to legal authorities: voluntary acceptance and cooperation.

The first argument of the self-regulatory approach is that the type of behavior we want from the members of society has changed (Tyler 2007; 2008, forthcoming). The roots of the compliance model lie in a focus upon rule-following backed up by risk assessments. Hence, people's focus is upon the environment, i.e., upon the potential risks of punishment that they face. This means that their behavior will be limited in scope. First, they are unlikely to follow the law when they are in situations in which the likelihood of being caught and punished for wrongdoing is small, nor will they accept decisions when they see ways to evade them. Compliance requires the continual presence of a credible threat of punishment.

Further, although people do comply due to the presence of legal authority (in

street stops "[r]egardless of police actions[,] obedience to authority is near universal."), people often revert to their prior conduct once that authority is absent (McCluskey 2003, 170). For example, people often cease to adhere to judicial orders once they are out of the courtroom, just as they resume illegal behavior once the police leave the scene. As Mastrofski et al. (1996) noted in commenting on their own research on policing, "[c]itizens who acquiesce at the scene can renege . . . ." (283). If citizens fail to fully agree with legal restrictions, further police intervention will eventually be required, and the police sometimes have to revisit the same problem multiple times. Hence, the legal system is also concerned with its ability to gain long-term compliance, not just immediate compliance. This is especially true when long-term relationships are important, as in the previously mentioned studies on family courts, in which the goal is for parents to share financial and emotional child-rearing responsibilities long after the court case is over.

Because there is often insufficient risk to motivate compliance and because there is need for continued rule-following over time, the legal system benefits when people voluntarily defer to regulations to some degree and follow them, even when they do not anticipate being caught and punished if they do not. In addition, in the context of personal experiences with police officers or judges, the legal system is more effective if people voluntarily accept the decisions made by legal authorities. Absent such acceptance, legal authorities must engage in a continuing effort to create a credible threat of punishment to assure long-term rule-following/decision acceptance. Hence, it is important to move beyond a concern with compliance toward a focus upon voluntary acceptance and continued deference over time.

Second, it is increasingly recognized that we want more from people than rule-following, however it is motivated. Legal authorities are increasingly focused upon the benefits of active public cooperation (Sampson, Raudenbush, and Earls 1997). The legal system, in particular the police, needs voluntary help from the public. Such help is important in two ways. First, the police need community members, who are familiar with the neighborhood and its residents, to report crime and criminals to the police. Second, the police need community residents to join them in town meetings and neighborhood watch organizations to identify and deal with community problems. These types of voluntary activity are not effectively motivated by the risk of punishment. Threats can sometimes compel obedience, but they do not motivate voluntary cooperation.

The shift from compliance to cooperation also requires us to expand the scope of our instrumental model, a model which can potentially involve both costs and benefits. While the legal system is based upon highlighting the cost of rule-breaking, law and legal authorities also offer potential benefits. Tyler and Huo (2002) found that the primary manner in which people have contact with the police and courts is that they go to them for help. Hence, legal authorities can create benefits by their performance. They can resolve disputes and maintain social order.

While compliance focuses upon motivating rule-following by emphasizing costs, a similar model argues for motivating cooperation by emphasizing the potential gains of cooperation. In this case, the gains are associated with the ability of legal authorities to effectively manage problems and resolve conflicts. In the case of the police, in particular, people may cooperate with the police when they see the police as effectively managing crime and community disorder. For example, the "broken windows model" argues that the police need to sanction minor crimes to prevent social disorder so the ability of the police to suppress such behavior, as well as to deal with crime more generally, communicates police competence and thereby motivates people to cooperate with the police (Harcourt 2001). In addition, effective punishment of wrongdoing not only shapes individuals' behavior (i.e., deterrence), it also communicates a message about competence that potentially impacts the larger community. Such a model focuses upon the gains of cooperation rather than the risks of rule-breaking. In the case of the courts, performance issues involve the ability of the courts to resolve disputes in a timely and affordable manner as well as to be authoritative and produce decisions with which citizens will comply. Like the deterrence model, performance models link people's behavior to personal gain/loss calculations rather than to values.

Changing our behavioral focus from compliance to voluntary acceptance and cooperation leads to a change in the type of motivation that we need to create among community residents. The old focus has been upon creating and maintaining a credible risk of being punished for rule-breaking behavior and/or demonstrating competence by controlling crime. The new focus needs to be upon the internal motivational forces that lead people to undertake voluntary actions without calculating the risks of punishment for wrongdoing or the potential personal gains for cooperation. People need to have an alternative basis for their actions.

In this paper my focus will be upon values as an alternative basis for internally motivated action. I will discuss legitimacy: the feeling of responsibility and obligation to follow the law, to accept the decisions of legal authorities, and to cooperate with and help legal authorities to do their jobs. Legitimacy is defined as "the property that a rule or an authority has when others feel obligated to voluntarily defer to that rule or authority. In other words, a legitimate authority is one that is regarded by people as entitled to have its decisions and rules accepted and followed by others" (Fagan 2008; Skogan and Frydl 2003, 297).

Modern discussions of legitimacy are usually traced to the writings of Weber (1968) on authority and the social dynamics of authority (Swedberg 2006; Zelditch 2001). Weber argued that successful leaders and institutions use more than brute force to execute their will. They strive to gain the consent of the governed so that their commands will be voluntarily accepted (Tyler 2006a). There are rules that people will voluntarily obey, authorities whose directives will be voluntarily followed, and the property that leads to these desirable consequences is legitimacy. 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, because a person thinks that an authority or a rule is entitled to determine appropriate behavior within a given situation or situations.

Kelman and 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 the actions taken by authorities "seems to carry automatic justification for them. Behaviorally, authorization obviates the necessity of making judgments or choices. Not only do normal moral principles become inoperative, 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" (Kelman and Hamilton 1989, 16).

Widespread voluntary cooperation with the law and legal authorities allows those 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. The resources needed for order maintenance can then be deployed in other ways.

One way to think about legitimacy is as a property of an institution. Studies of the legitimacy of legal authorities typically ask people to evaluate their general feelings of responsibility and obligation to obey the law and legal authorities (Tyler 2006a). 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 (Tyler 2006a; 2006d).

Legitimacy can also be the property of a person. In early policing, for example, the beat officer patrolled a particular area, an area in which she often lived. She developed personal relationships with the public—i.e. people knew them. So, they had legitimacy as individuals, and they built 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, and a badge. Their authority comes from the authority of their office, not from anything about them as particular people.

In practice, legitimacy has been operationalized in three ways. First, people have been asked about their feelings of obligation to obey the law and the decisions of legal authorities. For example, people have been asked to agree or disagree with statements such as: "If a police officer tells you to do something, you should do it?" Legitimacy has also been operationalized via evaluations of trust and confidence, through statements such as "judges are honest" or "judges care about the well being of the people they deal with." Finally, legitimacy has been measured through a scale measuring feelings (i.e. affect), for example, asking

people how warm or cold their feelings toward legal authorities are. When more than one of these measures is used in a single study, it is typically found that they are correlated with one another. Studies vary in their findings about the relative importance of these different elements of legitimacy. For example, in a sample of Americans, Reisig, Bratton, and Gertz (2007) found that trust and confidence were more important than obligation in shaping both compliance and cooperation.

III. SELF-REGULATION

The key to advocating a self-regulatory approach is addressing empirical issues that underlie the viability of that model. I will consider two. First, do values shape law-related behavior? Second, are there ways to create and engage values, in particular the legitimacy of the law and of legal authorities?

A. *Do Values Shape Law-Related Behavior?*

I first want to argue that people are more likely to obey a law if they think it is legitimate and/or consistent with their values. This argument generates several empirically testable propositions: The first is that values are distinct from fear of sanctioning or the benefits of performance and that their influence is greater in magnitude than the fear of sanctioning or the benefits of performance. The second is that values are particularly useful because they motivate voluntary deference and cooperation.

1. The General Public

The everyday law-related behavior of people within different communities has been the focus of a series of public opinion studies. These include a study of the residents of Chicago (Tyler 2006) and two studies of the residents of New York City (Sunshine and Tyler 2003; Tyler and Fagan 2008, 244). In each study people were interviewed about their law-related values and risk/performance judgments. These judgments were then linked to people's law-related behavior, including their compliance (the frequency of rule-following) and cooperation (cooperating with the police to identify crime and criminals; working to police one's neighborhood).

One example of such a study involves interviews with a sample of New Yorkers concerning the police (Sunshine and Tyler 2003, 531-34). In the first wave of a two-wave panel study, a sample of 1,653 residents were interviewed about police legitimacy, the risk of being caught and punished for law breaking, and the performance of the police, as well as about their self-reported compliance with the law and their voluntary cooperation with the police. Table 1 shows the results of the analysis. The results support several of the key points outlined. First, legitimacy is important with motivating both compliance and cooperation and it is as or more important than risk judgments in shaping compliance. It is also more important than assessments of police effectiveness in fighting crime. Second, legitimacy is especially important in the case of voluntary cooperation.

While the influence of both risk estimates and performance evaluations is approximately the same for compliance and cooperation, the influence of legitimacy relative to these instrumental factors more than doubles with cooperation, in comparison to compliance. Tyler (2006d) conducted a similar study in Chicago and similarly found that legitimacy was linked to compliance with the law (for further discussion, see Kane 2005, 490–91).

Tyler and Fagan (2008) replicated this finding using a panel study of New Yorkers. Their findings concerning cooperation, shown in Table 2, indicate that even when we control for prior attitudes and demographic characteristics, cooperation with the police emerges as linked to legitimacy (231). Further, the lack of an interaction with ethnicity indicates that both white and minority respondents placed an equally strong weight upon whether they viewed the police as legitimate when making behavioral decisions.

One difficulty with both the Tyler (2006d) and the Tyler and Fagan (2008, 266) analyses is that they rely upon self-reports of law-related behavior. To address this concern, Tyler, Sherman, et al. (2007) examined the influence of legitimacy upon law breaking using police records. They assessed legitimacy and then examined police reported behavior for the two year period following the assessment. Their sample was a group of Australian adults who had been arrested for driving while drunk and had their case adjudicated via differing procedures. Their results indicate that those who viewed the law as more legitimate were less likely to disobey it. Among the high legitimacy group, 3.3% of respondents were rearrested during a two year period, and among the low legitimacy group, 15.6% (558).

2. Organizational Studies

The focus of the studies outlined is on the people within communities. However, it has become clear in recent years that it is also important to consider issues of regulation in the context of the people within organizations. One group of importance is the employees within work organizations, whose rule-following is related to questions of white collar crime (Tyler 2009, 211–12). Securing employee adherence to work place rules and company policies is one key antecedent of successful functioning within organizations. It is important for companies to be able to effectively motivate rule-following behavior among employees, i.e., to be able to limit white collar crime (Tyler, Dienhart & Thomas, 2007, 32–33).

Can businesses effectively regulate the behavior of white collar employees, and if so, what strategies should they use to best achieve that goal? 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 (Hess 2007, 1782–84; Langevoort 2007, 1819–20). White collar crime is suddenly on the public agenda.

What is white collar crime and how does it differ from other types of crime? There are two principal distinctions. The first is who commits the crime. White collar criminals are typically better educated, employed, middle class and, at least historically, white and male. They are central members of society, not marginal individuals. Second, the crimes they commit tend to be nonviolent and to focus on money. The crimes involved are not emotionally driven, such as assault or rape, nor are they crimes involving physical harm. Instead, they are efforts by individuals to achieve economic gains outside the rules.

Rule adherence among white collar employees is important in a wide variety of work settings, and potentially involves organizational policies that cover, among other things, accurate accounting, conflicts of interest, product or service quality, environmental safety, sexual harassment, race, gender and/or sexual orientation discrimination, and just plain stealing of company supplies and equipment and of paid time worked via long lunch hours or phony sick days. In these and many other ways gaining adherence to organizational policies that control everyday employee behavior is critical for successful organizational functioning.

Unfortunately, there has long been extensive evidence that in many of these areas noncompliance within organizations is widespread (Tyler and Blader 2005, 1143). Such issues of compliance and noncompliance have been dramatically thrust into the public eye recently through highly visible incidents of corporate misconduct. The prevalence and damaging consequences of such non-compliance underscores the importance of identifying an effective model of employee rule adherence. Businesses would benefit from such a model since it would allow them to shape employee conduct in desirable ways. Further, from a policy perspective, government agencies are more likely to feel that the active regulation of businesses is important if they believe that businesses lack an effective model for self-regulation.

We can compare the relative efficacy of the two distinct strategies outlined. While the use of sanctions represents a traditional management strategy to securing employee compliance to organizational rules and policies, I consider recent studies that directly examine whether activating employees' values is an effective management strategy for securing their compliance. The use of a self-regulatory model has been long advocated within discussions of legal regulation of business (Selznick 1969, 82–84), and has been advanced with particular frequency in recent years (Tyler and Darley 2000). The study examined considers whether employees' values can in reality—as hypothesized by self-regulatory models—provide a viable basis for encouraging employee policy adherence. In particular, can we have a strategy of value-based regulation linked to legitimacy?

Tyler and Blader (2005, 1146) examine the role of legitimacy in shaping rule adherence among a sample of corporate bankers who completed questionnaires about their workplace (n = 540). Three behaviors were considered: compliance with rules, voluntary deference, and engagement in cooperative behavior in the workplace. The influence of legitimacy was compared to a cost/benefit analysis—what is the risk of rule-breaking and what are the gains of rule-following? The

results indicated that legitimacy was central to all three behaviors (see Table 3). Unlike the prior samples, in which legitimacy is especially strongly linked to voluntary behavior, in this study of corporate bankers, legitimacy is the key antecedent of all three forms of cooperation.

A second group whose behavior has important consequences for the legal system are agents of social control—i.e., law enforcement authorities (Tyler, Callahan, and Frost 2007, 457–58). Recent discussions of law enforcement have emphasized the importance of giving authorities discretion in how they do their jobs (Brown 1981, 304–05; Grattet and Jenness 2005, 935; Hawkins 1992, 11; Muir 1977, 270–71). The question is how to allow such discretion without inviting rule-breaking. Again, I argue for a focus on values.

This analysis of values will focus only on law enforcement authorities, drawing on a subsample of 209 federal agents and police officers from a larger analysis presented in Tyler, Callahan, and Frost (2007, 473). Three behaviors were considered: compliance with rules, voluntary deference, and engagement in cooperative behavior in the workplace. The issue is whether legitimacy shapes behavior in a way that is distinct from the influence of anticipated gains and losses. When the influence of legitimacy is compared to a cost/benefit analysis—e.g., a subjective estimate of the risks of rule-breaking and the gains of rule-following—the results indicate that, as was true with corporate bankers, legitimacy is central to all three behaviors (see Table 4).

3. Summary

The purpose of examining the findings of the studies outlined is to establish that legitimacy is linked to rule-following behavior. In the case of the original focus of past research on compliance, it is found that legitimacy has an influence upon behavior that is equal to or greater than that of the risk of punishment. More importantly, with voluntary acceptance and cooperation, the influence of legitimacy becomes stronger, and values emerge as the most effective motivator. Hence, increasing attention toward the ability to obtain voluntary deference and willing cooperation inevitably leads us to a concern about how to create and activate human values.

The second important aspect of the findings outlined is the extension from an examination of the members of urban communities to the study of people within organizational settings. Two settings were chosen, each for particular reasons. Because of the recent focus on problems of corporate conduct, one sample was composed of corporate employees. And, because of concerns over the conduct of agents of social control, the second sample was composed of law enforcement agents. The results of both analyses strongly supported a self-regulatory model of regulation (for other support, see Feldman and Lobel 2008, 182).

B. *Values Can Be Engaged Via Procedural Justice*

The second argument of the self-regulatory model is that values can be engaged by legal authorities because they are linked to judgments about how authorities exercise their authority—i.e., to procedural justice (Lind and Tyler 1988; Tyler and Lind 1992, 119–21). More specifically, values are rooted in the procedural justice of the actions of legal authorities. And, the procedures by which legal authority is exercised are typically under the control of legal authorities. While there are many possible values, the focus of concern here is upon legitimacy—e.g., feelings of obligation to obey the law.

If the issue were one of performance or of the ability to create a credible risk of deterrence, resource limits might prevent the authorities from delivering timely and effective social order maintenance. However, the core elements of procedural justice can be delivered even when outcomes are negative and people's problems and concerns cannot be effectively solved. Hence, to the degree that legitimacy is procedurally based, the implications are optimistic in terms of the ability of the authorities to create and maintain a supportive climate of values.

The role of procedural justice in shaping legitimacy and in influencing rule related behavior leads to the idea of *process-based regulation*—that procedures influence rule related behavior by shaping the legitimacy of the law and of legal authorities (Murphy 2005; Tyler 2003). Process-based regulation argues that our policy focus should be upon the manner in which legal authorities exercise their authority.

Procedural justice includes two issues: fair decision making (voice, neutrality)—i.e. participatory, neutral, transparent, rule based; consistent decision-making—and fair interpersonal treatment (treatment with dignity/respect; trust in authorities)—i.e. treatment involving respect for people; respect for their rights; treatment with dignity and courtesy; care and concern from authorities. Such issues can be considered at the institutional level and/or in terms of the actions of particular individuals (Blader and Tyler 2003b; 2003a, 749).

1. Accepting the decisions of legal authorities

Does procedural justice lead people to voluntarily accept the decisions made by legal authorities? Studies across a wide range of issues suggest that they do. This includes the criminal justice arenas I outline below as well as administrative hearings such as tax audits (Lawsky 2008), informal criminal procedures such as plea bargaining (Beloof 2007; O'Hear 2007), and a variety of types of other procedures in legal, managerial and community settings (Tyler 2006a, 385–90).

Tyler and Huo (2002, 30) interviewed 1,656 residents of Oakland and Los Angeles, each with a recent personal experience with the police and the courts. They asked respondents to make a set of evaluations of their experience, including: the favorability of the outcome; the fairness of the outcome; the fairness of the

procedures; and their willingness to accept the decisions made by the legal authorities involved.

An examination of the role of outcome favorability, outcome fairness, and procedural fairness in shaping voluntary acceptance, as reflected in the standardized regression coefficients shown in Table 5, indicates that the primary factor shaping decision acceptance after a personal experience with the police or a judge is the fairness of the decision making procedure (also see Engel 2005, 473–74; Gau and Brunson 2009; Wortley, Hagan, and Macmillan 1997; Reisig and Chandek 2001, 95; Wiley and Hudik 1974, 125–26).

This is true both for white and minority respondents. While minority group members are more likely to report having negative experiences with legal authorities and more frequently feel that they have been disrespected or treated unfairly (Davis, Henderson, and Cheryachukin 2004, 21; Weitzer and Tuch 2006, 2), whites and minorities are similar in that both groups react primarily to whether or not they receive fair treatment, rather than to the favorability or fairness of their outcomes.

It is possible to further distinguish such voluntary acceptance from simple compliance ("I did what I was told to do."), and when we do so (see the standardized regression coefficients in Table 6) the centrality of procedural justice to voluntary deference becomes clear. Compliance is almost equally shaped by procedural justice and the favorability of the outcome, while voluntary decision acceptance is almost totally the result of procedural justice.

A similar study of compliance with police orders also found that citizens focus on "how they are treated, in terms of respect" (McCluskey 2003, 166). McCluskey concludes that "normative features of authority behavior matter. We find they are extremely powerful . . . in explaining obedience to police requests for self control" (172). And, other studies reinforce the finding that procedural justice is an important concern to the members of minority groups. (for a study of personal experience see Shute, Hood, and Seemungal (2005); for a study of general judgments see Tyler (2001, 228–32)).

It is also important to directly address the issue of whether, at least for the police on the streets, it is important for police officers to firmly project authority, i.e. to control people and situations by making unequivocal commands backed up by non-negotiable displays of incontestable force. Sherman (1993) raises this question in his framework of possible responses to police directives by noting that two possible responses are compliance and defiance both in terms of immediate resistance and long-term criminal behavior. Is there evidence addressing this concern in the context of immediate resistance? McCluskey (2003) uses evidence collected in observer-based studies of police-citizen encounters in Indiana and Florida to explore the role of police coercion in motivating citizen compliance.

According to a force based model the police should be able to increase citizen compliance by projecting authority. McCluskey (2003, 145) tests this argument using observer ratings of police behavior. He focuses upon police requests for citizen self-control and findings that for initial requests by the police for

compliance "[s]urprisingly the coercive power that police bring to bear on a citizen in the form of commanding, handcuffing, arresting and so on, has a minimal impact on citizen's compliance decision" (100). At later points in the interaction, McCluskey finds that "the higher the level of coercive power displayed by police, the less likely targets are to comply. . . . For every one unit increase the index of coercion citizens are about twice as likely to rebel against the self-control request" (108). This leads him to conclude that "[t]hough coercion may be a central component of the police role, it appears to serve little to enhance compliance when first asked or when requests are repeated by the police" (173).[2] As a consequence, police scholars generally argue that "[t]he best officers are those who use less, not more force" (Terrill 2001, 232; see also Belvedere, Worrell and Tibbetts (2005); Bouffard and Piquero (forthcoming)).

In contrast to the general ineffectiveness of coercion McCluskey finds that when the police use procedures that are fair, compliance increases substantially. He identifies three distinct aspects of procedural justice—ethicality, information seeking, and decision making—and shows that each independently contributes to the general increase in initial compliance that results from procedural justice. McCluskey (2003) describes people as "seekers of justice" (173). Experience based procedural justice also shapes legitimacy. Tyler and Fagan (2008) used panel data to examine the influence of personal experience on legitimacy controlling for prior differences among respondents both in terms of their demographic characteristics and their antecedent views about the legitimacy of the police. Their findings reaffirm the centrality of procedural justice in personal experiences to people's subsequent evaluations of legitimacy. These results, shown in Table 7, indicate that views about legitimacy change significantly in response to personal experience. Tyler and Fagan (2008) further demonstrate that both fair and unfair experiences significantly change views about legitimacy, although in different directions. So, the police can both gain legitimacy by being fair and lose it by being unfair. This argument was disputed by Skogan (2006), but has recently received independent confirmation in a study of personal experiences with the police conducted in London (Bradford, Jackson, and Stanko 2009), which concluded that "positive contacts do contain the potential to improve aspects of trust and confidence" (21).

The ability of procedural justice to facilitate decision acceptance in response to personal experiences with legal authorities shows that procedural justice can play an important role in facilitating the exercise of legal authority in criminal, civil, and administrative hearings (Frazer 2006; Martinson, et al. 2006; McNeil 2008; Tyler 2006d; Winter and May 2001). This role is especially central to interactions in which trust in the authorities is low (Murphy 2004), legal authorities

[2] McCluskey notes that when the police mention the possibility of arrest, compliance goes up. However, he views this effect as due not to coercion but to the greater legitimacy that the police have when their actions are seen as consistent with the law.

impose themselves upon community residents (Murphy, forthcoming) or people question the legitimacy of the law (Murphy, Tyler, and Curtis, 2009).

Because procedural justice is central to the exercise of legal authority, judges and court administrators have argued that court systems need to be designed to create an experience of procedural justice for the people who come before judges and other legal authorities. The argument is that people who believe that they have received procedural justice are more likely to be willing to accept the decisions of legal authorities and to abide by those decisions over time (Burke and Leben 2007; Greacen 2008; Leben 2000; McNeil 2009; Tyler 2006c).

The courts in several states have been making proactive efforts to design court procedures, and in some cases the entire state court system, with an eye on the best policies and practices for creating procedures that are experienced by those who deal with the courts as litigants, jurors, or in other roles evaluating its procedures as fair (Benesh 2006; Gibson 2008). As noted, this includes treating people with dignity and respect, showing concern for people's rights and cultural backgrounds, using procedures that are judged to be unbiased and neutral, and giving everyone the opportunity to be heard (Denton 2008). There are several factors motivating courts to take such actions: the dramatic increase in self-represented litigants, increasing cultural diversity, and lower levels of trust and confidence in the courts.

One example of a statewide effort is the ongoing procedural fairness initiative in California. The Administrative Office of the Courts has been engaged in an ambitious multi-year effort that has involved redesigning courts to include features anticipated to increase perceived fairness among members of the public—e.g., help desks, improved translation services, informational pamphlets (*Procedural Fairness in the California Courts*), and on-line web resources such as informational videos and mechanisms for obtaining information and assistance. A parallel effort provides written and web-based resources for court personnel seeking to build such court systems (see Burke and Lefever 2007).

2. Climate of Procedural Justice and Legitimacy

What about the more general impact of evaluations of the procedural justice by which the authorities exercise their authority upon legitimacy? Sunshine and Tyler (2003) explore the influence of general evaluations of the procedural justice of the police upon people's judgments about the legitimacy of the police. Their findings, shown in Table 8, indicate that procedural justice is a key antecedent of legitimacy. If the police are evaluated as exercising their authority fairly, they are viewed as more legitimate (see also Fischer, et al. 2008; Murphy, Hinds, and Fleming 2008; Reisig, Bratton, and Gertz 2007). When authorities are viewed as procedurally unjust, their legitimacy is undermined, leading to support for disobedience and resistance (Fischer, et al. 2008).

What is striking in these studies is the degree to which performance issues are not central to public evaluations. Tyler (2001) analyzed several surveys of public views of the courts and found that issues such as delay and cost, while often

mentioned in critiques of the courts by journalists and public figures, were a minor influence on public trust and confidence in the courts, a finding replicated in a study of the California courts (Rottman 2005).

In an analysis of the California data (Tyler and Rottman 2009), procedural justice was found to be the primary factor shaping confidence in the courts among those with personal experiences with the courts (beta = 0.36, $p < .001$). Performance issues (i.e., delay, cost, etc.) had no influence upon confidence among users (beta = 0.15, not significant). Among nonusers, procedural justice was again the key issue (beta = 0.51, $p < .001$), and performance had a significant, but lower influence (beta = 0.09, $p < .001$). Among attorneys, procedural justice also mattered (beta = 0.37, $p < .001$), as did issues of performance (beta = 0.21, $p < .001$). Similarly, Sunshine and Tyler (2003) found that judgments of police performance in fighting crime and estimates of the risk of being caught and punished for wrongdoing (which is an index of whether the police can present a credible threat to wrongdoers) has minor influences upon legitimacy. Legitimacy is primarily an issue of procedural justice, although performance has some influence.

3. Organizational Climate

What about the ability of authorities to shape legitimacy by the type of organizational climate they create? The members of two organizations are considered here: corporate employees and law enforcement agents. An examination of the role of procedural justice in shaping legitimacy within each group suggests that the influence of procedural justice upon legitimacy is strong in both groups (Table 9).

The findings regarding agents of social control are especially important and relevant to this discussion. Any effort to create a climate in which the people who deal with the law and legal authorities experience procedural justice leads to a focus on how policing organizations or courts can create an organizational framework that motivates their members to want to follow policies of fairness. These findings suggest that legal authorities act fairly when they themselves experience justice in their own work organizations. This finding is supported by other studies of the police. DeAngelis and Kupchik (2009) conducted an independent study of police officers and found that "the best predictor of officers' willingness to accept the decisions made by command staff appears to be perceptions of procedural justice" (277).

III. WHAT IS PROCEDURAL JUSTICE?

As I have noted, procedural justice can be divided into two components: the quality of decision making and the quality of interpersonal treatment. And, it can be considered either in terms of those authorities with whom people have personal contact, or as an overall institutional issue. An examination of the data on personal

encounters with particular legal authorities (Tyler and Huo 2002) suggests that both elements matter.[3] However, the results suggest that, in personal experiences, quality of interpersonal treatment is a central issue (see Table 10). In other words, when people are dealing with authorities they are strongly influenced by issues such as politeness and respect for rights. This conclusion is reinforced by the panel findings of Tyler and Fagan (2008), which show interpersonal treatment as the key aspect of personal experience that influences legitimacy (Table 11).

Of course, many people have little personal contact with the police or the courts. Nonetheless, they do have views about how the authorities generally exercise their authority. And those judgments shape their overall views about the legitimacy of the law. Using results from one of the studies of New Yorkers outlined in Tyler and Fagan (2008), we can consider how such general judgments about procedural justice shape views about legitimacy, in this case the legitimacy of the police. The results of a regression are shown in Table 12, and they indicate that both quality of decision making and quality of treatment were important in shaping legitimacy.

Tyler and Rottman (2009) analyzed the results of a statewide survey of trust and confidence in the California courts and found that the quality of decision making (beta = 0.11, $p < .001$), the quality of treatment (beta = 0.42, $p < .001$), outcome fairness (beta 0.21, $p < .001$), and performance issues (beta = 0.09, $p < .001$) all shaped overall confidence in the courts. They also analyzed the views of attorneys and found that their confidence was influenced by the quality of decision making (beta = 0.10, $p < .01$), the quality of treatment (beta = 0.30, $p < .001$), fairness of decisions (beta = 0.37, $p < .001$), and performance issues (beta = 0.20, $p < .001$).

Finally, the analysis of respondents within organizational settings examines these two issues at both the interpersonal (workgroup) level and at the organizational level. The results are shown in Table 13. They are strikingly similar across two distinct organizations, suggesting that the fairness of treatment that people experience within the organization and the quality of decision making they experience from their immediate superiors both shape overall organizational legitimacy.

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[3] The analysis performed here is organized differently than that of Tyler and Huo (2002). In this analysis, quality of treatment includes both courtesy/respect for rights and trust in the motives of the authorities as antecedents of decision acceptance. In Tyler and Huo (2002), procedural justice and trust were treated as direct antecedents of decision acceptance, while quality of treatment was an antecedent of both (and was operationalized as courtesy/respect for rights). The reason that Tyler and Huo (2002) organized the variables differently is that trust has a distinct role in shaping the acceptability of personal decisions made by authorities. However, for the purposes of consistency, I am organizing the variables of that study as procedural justice variables have generally been organized in the procedural justice literature. To see the overall model used by Tyler and Huo, look at page 161 of their book.

A. *Whom Should We Study?*

The studies outlined are concerned with general populations. In that respect, they do not address the small group of life-long criminals that are the focus of much criminological research. I want to acknowledge this concern and make a general argument about strategies of regulation drawn from the writing of Ayres and Braithwaite (1992).

Their argument is that the key issue in regulation is which strategy of regulation is presented first. If deterrence is the general strategy presented, then all of the members of society frame their interactions with the legal system in instrumental terms. It is better to frame the general strategy as one of engaging values. This strategy engages the values of the large group within the general population that has values that can serve as a basis for law-related behavior and maximizes the role of their values in shaping their behavior. Some members of society lack values or lack the requisite trust and confidence in the law to act based upon engaged values. This smaller group may need to be the target of deterrence-based regulation. However, because the largest group of people within society is behaving based upon their values, the resources needed to deal with the smaller group are minimized. It is a value-based strategy that is most likely to broadly engage public values in the service or rule-following behavior.

And, of course, while implementing such a strategy, it makes sense to focus upon rehabilitation, i.e., upon reconnecting people with their values and their ties to society and its rules and authorities (Tyler 2006b). This is a core goal of restorative justice, which is an alternative to traditional adjudication, and which argues that it is important to reconnect offenders to their values as an approach to lowering the rate of recidivism. It is encouraging that recent research suggests that people can be affected by rehabilitation, even as adults (Lipsey and Cullen 2007), while studies of traditional punishment suggest that it is delegitimizing (Franke, Bierie, and MacKenzie 2009).

It is also important to ask whether "hard core" criminals are sensitive to issues of procedural justice, as well as whether they engage in value-based behaviors. Tyler and Huo (2002) focused upon the respondents within their general population sample that were young, minority males. They then explored the basis of the reactions to personal experiences with legal authorities among the members of this group. Their results indicated that this group was as focused upon issues of procedural justice in making acceptance decisions as was the general minority population and, beyond that, people in general.

Tyler and Casper (Casper, Tyler, and Fisher 1988; Tyler, Casper, and Fisher 1989) analyzed the results of a panel study of defendants arrested for felonies, defendants who were generally young, minority, and male. They found that the evaluations of the procedural justice of the case disposition process made by these defendants had a strong influence upon their satisfaction with their experiences and was the primary factor in shaping their generalization from their personal

experience to their overall views about the legitimacy of the law and the legal system.

Other studies similarly suggest that procedural justice plays an important role in shaping the attitudes and behaviors of "criminals." This includes research showing that the procedural justice of prisons is related to inmate behavior (Bottoms 1999; Gray 2007; Sparks, Bottoms, and Hay 1996), that the justice of criminal procedures influence recidivism (for drug courts see Gottfredson, et al. 2007; McIvor 2009; for post-release meetings with prior offenders, see Papachristos, Meares, and Fagan 2009; Taxman, Soule, and Gelb 1999), that procedural justice shapes the reactions of domestic violence suspects (Paternoster, et al. 1997), and that issues of quality of treatment by peers and authorities are central to the actions of the members of juveniles and the members of gangs (Bourgois 1996; Crawford 2009; Emler and Reicher 1995; Hinds 2007, 2009). Another group that has proven challenging for the police is the mentally ill who often do not respond well to traditional policing tactics. This poses risks for both the mentally ill and for police officers (Watson and Angell, et al. 2008; Watson and Morabito, et al. 2008). Procedural justice approaches have also been applied to interactions with the mentally ill (Cascardi, Poythress, and Hall 2000; Lidz, et al. 1995; Poythress, et al. 2002; Watson and Angell 2007).

B. *Implications*

The results outlined support the two key empirical propositions I have advanced. First, values shape rule-following. In particular, values lead to voluntary behavior, including both voluntary decision acceptance and cooperation with legal authorities. Second, procedural justice shapes values. If authority is exercised fairly, the law and legal authorities are viewed as legitimate and seen as entitled to be obeyed.

These findings suggest that there are mechanisms for building value-based regulation and maintaining social order by relying more strongly on voluntary cooperation. This has clear societal advantages, since widespread voluntary cooperation with the law and legal authorities allows those 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 and the resources needed for order maintenance can be deployed in other ways.

The findings also support the arguments of the *process-based regulation* model by showing that procedural justice is a key antecedent of legitimacy and of rule-following behavior. This aspect of the self-regulatory approach is important because it suggests both that legal authorities have a mechanism for shaping values and rule-following behavior, and provides clear suggestions about what that framework involves. It is possible to both craft policies and build training programs based upon the ideas of procedural justice.

My focus in this discussion is on the United States, although it is clear that

similar issues are central to regulation throughout the world (Tyler et al. 2007). Recent studies suggest that different dynamics may shape the exercise of authority in societies in which legitimacy is low, or the conception of the relationship between people and authorities does not involve the same set of articulated rights and duties that is characteristic of societies like America. For example, Tankebe (2008) found that while procedural justice shaped trust in the police, effectiveness was the key antecedent of political trust among people in Ghana. Reisig and Mesko (2009) similarly found that procedural justice in a Slovene prison shaped both self-reported and institutionally recorded rule-violation. However, the study did not find that procedural justice shaped legitimacy, nor that legitimacy led to rule-following.

One possible reason for variations in the effectiveness of this model is variations in the legitimacy of law and legal authorities. Murphy, Tyler, and Curtis (2009) examined the effectiveness of procedural justice mechanisms when people did not view the law as legitimate. Using survey data collected in three regulatory contexts—taxes, social security, and general law enforcement—they found that acceptance is more strongly linked to issues of procedural justice when people question the legitimacy of the law. Hence, there may be circumstances under which procedural justice directly influences behavior without legitimacy playing a mediating role.

C. *Background*

The argument that values are central to regulation and governance is hardly a new one. Montesquieu, one of the founders of modern sociology, discussed the human passions that underlie effective societies and, in the case of democracies, focused upon "virtue"—the willingness to put aside self-interest to act in ways that help one's society (Shackleton 1961). He contrasted virtue with fear, which he characterized as the passion underlying the success of despotic states (Tyler 2007). This focus upon values as a core linkage between people and their communities is also prominent within both Weber's writing on legitimacy—the perception of obligation to obey legal authorities (Swedberg 2006; Weber 1968)—and Durkheim's focus on legal authorities as enforcers of shared moral values (Cotterrell 1999; Jackson and Sunshine 2007; Nisbet 1974). The writings of these sociologists, while different in many ways, share a focus on the argument that the success of governmental authorities in democratic states is linked to their ability to call upon the people's values as a basis for their actions.

Within psychology, a similar focus on internalized values is central to the writing of Freud. Freud wrote about the importance of the internalization of values, i.e., a transformation after which societal norms are not viewed as "external, coercively imposed pressures to which they must submit" (Hoffman 1977, 85), but instead become part of a person's own value system and are followed even in the absence of external authority. Freud focused primarily upon moral values. However, more recently, the concept of internal values is articulated

more broadly within Kurt Lewin's field theory, which has been important within social psychology (Tyler, forthcoming). Lewin studied systems of authority and was concerned with the conditions under which authorities would have their decisions and rules voluntarily accepted.

Social scientists have also recognized the centrality of internal values in regulation and governance (Tyler 2006a). As Kelman (1969) puts it: "[I]t 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" (278). Political scientists refer to this set of values as a "reservoir of support" for government and society (Dahl 1956; Easton 1965, 1975), and writers in political science have also noted the importance of creating and maintaining legitimacy as a foundation for the authoritativeness of the state (Lipset 1959). Just as the law needs people to obey the law, the state needs people to be willing to act on behalf of the state, paying taxes, fighting wars, etc.

Although it may not always be easy for authorities to maintain high levels of legitimacy, 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. This is achieved by developing and maintaining a culture of supportive social values that will be internalized by the citizenry and will lead to voluntary actions on behalf of society and social authorities.

More recently, value-based approaches have become less important in discussions of social order and regulation, as models of individual "rationality," such as deterrence models of compliance and performance-based models of cooperation, have taken on a larger role in criminal justice thinking (Cullen et al. 2002). My argument is that we would gain by refocusing upon building and maintaining supportive values and then using those values as the central pillar in a strategy of regulation.

D. *Legitimacy and Morality*

Of course, 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 (Bilz and Nadler 2009). 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. Hence, people are less likely to obey laws that are not consistent with their moral values (Tyler 2006d). Further, discrepancies can be generalized beyond a particular law

and shape adherence to a broader range of laws (Mullen and Nadler 2008; Nadler 2005).

And, like the social value of legitimacy, morality is internal and shapes actions distinct from the considerations of being caught and punished for wrongdoing. What unites the study of legitimacy and morality? In both cases, the key is that people accept 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 (see Robinson and Darley 1995; Tyler and Darley 2000). 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. Internalized moral values are self-regulating and people accept and act on the basis of values that produce respect for societal institutions, authorities, and rules.

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 (Carlsmith, Darley, and Robinson 2002; Darley, Carlsmith, and Robinson 2000). 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 (e.g., Robinson and Darley 1995; Tyler 2006a). 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 incongruent. To activate the motivation force of morality, legal authorities must pursue policies that are consistent with people's moral values (Sunshine and Tyler 2003).

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, such as when the government criminalizes drug use or certain sexual practices without the support of public morality (Darley, Tyler, and Bilz 2003). The conflict can also involve dramatic and high-stakes conflicts, such 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 (Tyler 2006a), the two internal forces do not always support one another.

E. *The Need for Value-based Motivation*

The importance of focusing upon self-regulation comes from the widespread recognition of the value of voluntary cooperation with authorities. Because cooperation is important, a change is needed in the type of motivation that is the focus of regulatory efforts. It is important to have the type of motivation that leads to voluntary deference and cooperation, and that motivation is value-based. Value-based motivations not only lead to voluntary deference, they also motivate willing cooperation.

The problems of instrumental motivations are twofold. First, they do not motivate voluntary actions. Second, the use of sanctions undermines values. When sanctions become the focus of attention, the role of values is crowded out, or diminished. Further, the relationship between authorities and people is undermined, since authorities become associated with punishment.

Two dynamic models can be imagined. First, because a focus on sanctions undermines values and relationships with authorities, more resources are required to effectively implement sanctions; for example, more resources to build prisons and to keep people imprisoned longer. The authorities become increasingly dependent upon punishment, and other linkages between people and the state diminish in significance.

The alternative model involves an emphasis upon values. This makes values more salient and accordingly, the role of sanctions diminishes. People are increasingly self-regulatory, so society is increasingly free to use resources for education and job creation. This, in turn, leads to additional social motivations to be law-abiding. People increasingly have something to lose by breaking rules, so their personal motivation to be law-abiding becomes stronger. Also, people's behavior becomes more flexible and adaptive, responding well to local needs and conditions.

Overall, there are two arguments for value-based motivation. First, we gain the benefits of a value-based approach—e.g. increasing voluntary cooperation. Second, we avoid the problems associated with instrumental approaches. To gain

these advantages we need to move to a system in which value-based motivations are the primary motivation tapped, and instrumental motivations are the backup for a small group that have to be dealt with instrumentally because they are unable or unwilling to act on their values. Since values work for most people, we generally reap benefits from self-regulations, and using value-based approaches does nothing to undermine any subsequent reliance upon instrumental mechanisms. In other words, unlike instrumentality, which undermines values, values do not undermine instrumentality.

F. *Caveat*

It is also important to acknowledge that there may be circumstances in which aligning the law with public values can be problematic. For example, with school desegregation in the South in the 1950s, the law ran counter to public views. Similarly, laws today protecting women against harassment or violence can run counter to general public values in traditional societies that view such behavior as acceptable. Hence, it is important to recognize that law should not always follow public views. For a discussion of this issue in the area of criminal law, see Robinson and Darley (1995). Robinson and Darley argue, as I have, that it is more difficult for the law to be effective when it deviates from general public opinion and law can only rely upon coercion for its effectiveness.

IV. POLICY IMPLICATIONS

I will focus on three policy implications of a self-regulatory model. The first implication concerns the importance of developing mechanisms for value creation. The second implication involves engaging people's values. Finally, there is a need for mechanisms for the periodic assessment of legitimacy and procedural justice.

A. *Developing Mechanisms for Value Creation*

First, 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 should be obeyed. For this model to work, society must create and maintain public values that are conducive to following justice norms. Self-regulation can only be effective if people have values that support rule-following.

First, we need to make value creation a priority. The key to a value-based approach such as the self-regulatory model is the development of supportive values. Ideally such values develop early in people's lives as part of the general socialization process, and lead to rule-following as part of a general lifestyle. Hence, value-based regulation argues for a focus upon legal socialization—the development of supportive values of legitimacy, as well as the development of

moral values. Interestingly, research that focuses upon adolescents suggests that the experience with procedural justice shapes orientations toward the law.

Fagan and Tyler (2003) demonstrate that the personal experiences of adolescents with the police and courts shape their views about the legitimacy of the law and legal authorities, as well as their compliance with the law. Therefore, the possibility of building legitimacy begins with early experiences with the police and courts, experiences that can be understood by adolescents as being procedurally fair or unfair.

The work of Fondacaro, Dunkle, and Pathak (1998) provides another example of how procedural justice matters during adolescence. They demonstrate that adolescents who report low levels of procedural justice in their families are more likely to be involved in a variety of forms of deviant behavior. In particular, they are more likely to become involved in deviant peer groups (Fondacaro, Dunkle, and Pathak (1998). And, those in deviant peer groups are less likely to cooperate with authorities by reporting students who bring weapons to school (Brank et al. 2007).

Of course, the research outlined makes clear that procedural justice also matters among adults. In particular, Tyler and Fagan (2008) show that when people experience procedural justice in personal encounters with the police, their views about police legitimacy increase, while procedural injustice undermines legitimacy. Further, studies of public views concerning police practices, such as racial profiling, indicate that people's evaluation of police legitimacy decline if the police exercise their authority in ways that people evaluate as being unfair (Tyler and Wakslak 2004). These findings echo Muir's argument that the police need to play the role of "civic educator" by teaching people about the obligations of living in a free society (Muir 2008). Conversely, the police can create cynicism and distrust by behaving unfairly (Bowers 2007; Collins 2007; Graziano, Schuck, and Martin 2009; Higgins, Gabbidon, and Jordan 2008)

Finally, the issue of value creation arises in the wake of offending behavior. Restorative justice focuses upon reestablishing links with people in one's family and community, for example parents and neighbors (Braithwaite 1989, 2002), while procedural justice suggests the importance of establishing the legitimacy of the law. However, the analysis of Tyler, et al. (2007) suggests that both are important, and both are linked to similar types of procedurally fair case disposition processes.

B. *Evaluating Policies in Terms of Their Impact on Value Engagement*

Second, we need to evaluate legal policies in terms of their impact upon values, as well as their impact upon performance. One should ask whether a practice leads to the engagement or disengagement of people's values from playing a role in shaping their rule-related behavior. Unless the legitimacy of the legal system is high enough, and trust and confidence in legal authorities is sufficiently

high, people will not act based upon their values. The system will not be able to draw upon a reservoir of supportive values.

In the case of judges, for example, efficiency may suggest that opportunities for participation should be minimized. However, the importance of creating experiences that litigants view as fair suggests the value of providing people with a voice, explaining decisions to them, and otherwise ensuring that their experience in court has the elements of justice (Tyler 2006d). The linkage of public trust and confidence in the courts has recently been affirmed by a survey of the residents of California (Rottman 2005, 2007). The results support the argument that public concerns about the courts and court practices are focused upon issues of procedural justice (Burke and Leben 2008; Rottman 2008; Tyler 2006; 2008).

An analysis of the results of the California study (Tyler and Rottman 2009) indicates that people placed great weight upon whether the courts acted fairly, and very little upon issues such as cost and delay. As a consequence, the California courts have instituted training procedures with the goal of ensuring that people's interactions with the courts are consistent with public views about procedural fairness.

Similarly, when the police deal with citizens, their policies and practices should be evaluated against the backdrop of what we know about how the public evaluates police actions. For example, the stops that people experience on the street, in subways, at airports and borders, and in cars are an intrusion by the authorities into people's lives. The perspective presented here argues that these intrusions should be understood in terms of their perceived fairness, the factor that shapes police legitimacy. Hence issues such as the length of the stop, the criteria by which people are chosen, etc. should be evaluated in terms of how they are experienced by those stopped.

Empirical studies of the experience of being stopped (Tyler and Wakslak 2004) suggest that it is important to understand why people feel they have been stopped. Being stopped due to one's age, gender, or ethnicity ('profiling'), has negative consequences for legitimacy. However, fair procedures when stopped lead people to be less likely to infer that they have been profiled. Hence, the focus needs to be how the police should act so as to minimize the negative consequences of this or any other police practice.

What I am advocating is empirical jurisprudence—creating legal procedures based upon the results of research about the public (Markell and Tyler 2008; Tyler and Markell 2009). An earlier example of such an effort is the work of Slobogin on police searches (Slobogin 1991; Slobogin and Schumacher 1993). Slobogin argues that laws about the acceptability of police intrusions into the life of members of the public should be shaped by public judgments about how intrusive the searches conducted by law enforcement officers are, an argument also made by Nadler in a discussion of the law regarding "voluntary consent" to be searched by the police (Nadler 2003). Similarly, I am arguing that legal practices should be linked to public judgments about the fairness or unfairness of varying mechanisms for resolving legal issues. As Nadler notes, "perceived injustices in the legal

system have subtle but pervasive influences on people's deference to and respect for the law in their everyday lives" (2003, 218) (also see Nadler 2005).

C. *Monitoring the Climate of Legitimacy*

Third, it is important to institutionalize mechanisms for evaluating legal authorities in terms of their legitimacy as well as the consistency of their policies and practices with the principles of procedural justice. In their evaluation of policing over the last several decades, Skogan and Frydl (2004) suggest that the objective quality of police performance has improved in a variety of ways, but trust and confidence in the police remain low. I argue that the reason that trust and confidence remain low is that the legitimacy of the courts and the police is not strongly linked to performance issues. Instead, legitimacy must be addressed as an issue that has its own distinct antecedents in the way authority is exercised.

One consequence of viewing legitimacy as a distinct issue, noted above, is the need to evaluate the practices of legal authorities against the criteria of procedural justice. To do so, it is important to have ongoing studies that measure those criteria. Without such information, the focus of evaluative efforts must be upon objective indices such as the rate of crime, the number of police shootings, etc. Tyler (2002), for example, argues for the value of periodic surveys of legitimacy, both nationally and in major cities. Such a survey would allow legitimacy data to be included in evaluations of the quality of policing.[4]

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[4] This presentation has been improved based upon feedback during several earlier presentations of these ideas. The first was at a Plenary address at the European Society of Criminology in Edinburgh (September, 2008). The second was at a talk in the Distinguished Lecture Series, Department of Criminology and Criminal Justice, University of Maryland (October, 2008). The third was at presentations during the fall of 2008 at the Conference on empirical legal studies (Cornell) and at Temple University and Northwestern University Law Schools. I appreciate the helpful feedback I received during each of these earlier presentations regarding the ideas I am writing about today.

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Table 1. Legitimacy, compliance and cooperation.

	Compliance	Voluntary cooperation
Legitimacy	.13***	.29***
Performance	.08**	.06
Risk	.08**	.11***
Adjusted R.-sq.	3%	11%

Source: Data from Sunshine and Tyler (2003).

Entries are standardized regression coefficients. Sample of the residents of New York City. n = 1,653.

*p < .05; **p < .01; ***p < .001.

Table 2. The antecedents of helping the police and the community.

	Voluntarily help the Police			Voluntarily help the Community		
	b	*SE*	*p*	*B*	*SE*	*p*
Wave 2						
Legitimacy	.236	.058	***	.263	.088	**
Legitimacy * Ethnicity[b]	.050	.069		.121	.105	
Crime conditions	.024	.042		.230	.063	***
Risk	.016	.024		.136	.036	***
Identification-neighborhood	-.001	.035		.182	.053	***
Wave 1						
Cooperation	.390	.031	***	.537	.030	***
Legitimacy	.027	.047		-.226	.072	**
Crime conditions	.004	.041		-.184	.063	**
Risk	.001	.018		.010	.028	
Identification-neighborhood	.078	.029	**	-.060	.051	
Demographics						
Gender	-.010	.032		-.024	.048	
Age	.004	.015		.055	.022	*
Education	-.008	.012		.034	.018	
Income	-.010	.009		-.002	.014	
Ethnicity	.123	.205		.290	.310	
Adjusted R-squared	34%			43%		

Source: Tyler and Fagan (2008, 251).

Entries are unstandardized regression coefficients (b) and their standard errors. Panel sample of the residents of New York City. n = 830.

*p < .05; **p < .01; ***p < .001.

Table 3. Corporate employees.

	Comply	Voluntarily accept rules	Engage in non-required behavior
Legitimacy of organizational rules	.28***	.37***	.29***
Probability gain/loss	.02	.06	.06
Adj. R.sq.	8%***	14%***	9%***

Source: Data from Tyler and Blader (2005).

Entries are standardized regression coefficients. Sample of corporate bankers. n = 540.

Table 4. Law enforcement agents.

	Comply	Voluntarily accept rules	Engage in non-required behavior
Legitimacy of organizational rules	.28***	.34***	.37***
Probability gain/loss	.05	.02	.06
Adj. R.sq.	12%***	27%***	13%***

Source: Data from Tyler, Callahan, and Frost (2007).

Entries are standardized regression coefficients. Sample of Federal and local law enforcement agents. n = 209.

*p < .05; **p < .01; ***p < .001.

Table 5. The influence of procedural justice on voluntary decision acceptance during personal experiences with legal authorities.

	Overall	White	Hispanic	African-American
Procedural justice	.69***	.67***	.66***	.75***
Distributive justice	.12**	.12**	.17**	.04*
Outcome favorability	.09*	.21**	.04*	.13**
Adjusted R.-sq.	69%***	74%***	60%***	70%***

Source: Data from Tyler and Huo (2002).

Entries are standardized regression coefficients. Sample of residents of Oakland and Los Angeles. n = 1,656.

Table 6. Voluntary decision acceptance vs. compliance in personal experiences with legal authorities.

	Compliance	Voluntary decision acceptance
Procedural justice	0.13***	0.69***
Distributive justice	0.00	0.12***
Outcome favorability	0.08**	0.09**
Adjusted R.-sq.	3%***	69%***

Source: Data from Tyler and Huo (2002).

Entries are standardized regression coefficients. Sample of the residents of Oakland and Los Angeles. n = 1,656.

*p < .05; **p < .01; ***p < .001.

Table 7. The influence of procedural justice during a personal experience on time two legitimacy.

	Unstandardized regression coefficient	Standard error
Judgments about personal experience		
Procedural justice	0.17	0.05***
Outcome valence/ outcome fairness	0.03	0.04
Background factors		
Gender	-.02	0.04
Age	-.06	0.02***
Education	0.02	0.02
Income	0.00	0.01
Ethnicity	0.01	0.05
Control for prior views		
Time one legitimacy	0.47	0.05***
Adjusted R.-sq.	58%	

Source: Tyler and Fagan (2008, 257).

Entries are the unstandardized regression coefficient and its standard error. Sample of the residents of New York City.

*p < .05; **p < .01; ***p < .001.

Table 8. The overall procedural justice of legal authorities and their legitimacy.

	Legitimacy
Judgments about overall character of police activities	
Procedural justice	.35***
Distributive justice	.20***
Performance	.03
Crime problem	-.06*
Risk	-.01
Sex	-.06
Age	-.09**
Income	-.06*
Education	-.03
Hispanic vs white	.09**
African-American vs white	.16***
Adj. R.-sq.	34%***

Source: Data from Sunshine and Tyler (2003).

Entries are the standardized regression coefficient. Sample of the residents of New York City. n = 1653.

*p < .05; **p < .01; ***p < .001.

Table 9. Influences on legitimacy in organizational settings.

DV = legitimacy of organizational rules		
	Corporate employees	Law enforcement agents
Procedural justice	.32***	.24***
Distributive justice	-.04	.02
Outcome favorability	-.01	.10**
Adjusted R.-sq.	8%	11%
N	540	209

Source: Data from Tyler and Blader (2005) and Tyler, Callahan, and Frost (2007).

Entries are the standardized regression coefficient.

*p < .05; **p < .01; ***p < .001.

Table 10. Procedural justice in personal experiences with legal authorities.

	Overall procedural justice	Voluntary decision acceptance
Quality of decision making	.23***	.20***
Quality of treatment	.62***	.61***
Outcome fairness	.03	.09***
Outcome favorability	.09***	.12***
Adjusted R.-sq.	77%	78%

Source: Data from Tyler and Huo (2002).

Entries are the standardized regression coefficient. Sample of the residents of Oakland and Los Angeles. n = 1,656.

Table 11. Personal experiences and judgments of police legitimacy.

	Wave two legitimacy	
	Unstandardized regression coefficient (b)	s.e.
Judgments about personal experience (wave two)		
Quality of decision making	0.00	0.05
Quality of treatment	0.16	0.05***
Outcome valence/fairness	0.02	0.04
Demographics		
Gender	-.02	0.04
Age	-.06	0.02
Education	0.02	0.02
Income	0.00	0.01
Ethnicity	0.00	0.05
Wave one legitimacy	0.46	0.05***
Adjusted R.-sq.	58%	

Source: Data from Tyler and Fagan (2008).

Entries are the unstandardized regression coefficient.

*p < .05; **p < .01; ***p < .001.

Table 12. What community level procedural elements shape legitimacy?

	b	*SE*	*p*
Wave 2			
Quality of decision making	.141	.033	***
Quality of interpersonal treatment	.158	.030	***
QDM * ethnicity	.078	.056	
QIT * ethnicity	-.024	.054	
Police performance	.034	.026	
Sanctioning risk	.033	.015	*
Distributive justice to groups	.056	.019	**
Wave 1			
Legitimacy	.475	.029	***
Quality of decision making	-.038	.016	*
Quality of interpersonal treatment	-.015	.017	
Police performance	-.025	.025	
Sanctioning risk	-.005	.012	
Distributive justice to groups	-.019	.018	
Demographics			
Gender	.003	.020	
Age	.030	.009	***
Education	-.007	.008	
Income	.009	.006	
Ethnicity	.087	.066	
Adjusted R.-sq.	71%		

Source: Data from Tyler and Fagan (2008, 254).

Entries are the unstandardized regression coefficient.

p <.05; **p < .01; ***p < .001. All respondents (n = 830).

Table 13. Factors shaping overall judgments of procedural justice.

	Corporate employees		Law enforcement	
	Procedural justice	Legitimacy	Procedural justice	Legitimacy
Workgroup decision making	.19***	.19*	.09	.24*
Workgroup quality of treatment	.03	.03	.36***	.07
Organization decision making	.04	-.06	.13*	-.11
Organization quality of treatment	.23***	.22*	.10	.28*
Outcome fairness	.54***	-.01	.41***	.04
Adjusted R.-sq	76%	9%	78%	18%
n	540		209	

Source: Data from Tyler and Blader (2005) and Tyler, Callahan, and Frost (2007).

Entries are the standardized regression coefficient.

*p < .05; **p < .01; ***p < .001.