

# Procedural Fairness and Compliance with the Law

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My goal is to discuss the findings of recent research exploring why people obey the law. I am a psychologist and will focus directly on microlevel issues concerning the psychology of the person. In particular, I will explore research examining naturally occurring attitudes, values, and behaviors. I will do so by considering studies based upon interviews with citizens.

I want to make four basic points. The first is that it is difficult to enforce the law using only the threat of punishment. Authorities need the willing, voluntary compliance of most citizens with most laws, most of the time. Second, such voluntary compliance is linked to judgments about the legitimacy of authorities and the morality of the law. Third, public views about the legitimacy of legal authorities are linked to judgments about the fairness of the procedures through which those authorities make decisions. Finally, an important element in procedural justice judgments involve evaluations of the manner in which authorities treat citizens. Taken together, these findings suggest that an important component of the effective exercise of authority involves non-instrumental issues. By including such non-instrumental concerns in the study of compliance with the law we can more completely understand the dynamics of obedience with social authorities.

## 1. BEHAVIORAL COMPLIANCE WITH THE LAW

Past discussions of the effective exercise of legal and political authority have focused on the ability of leaders to shape the behavior of citizens. In particular, the ability to secure compliance with decisions and rules, more broadly labelled the ability to be authoritative (TYLER, 1990; TYLER and LIND, 1992), is widely recognized to be a central characteristic of effective organizational authorities. In other words, to be effective, legal rules and decisions must be obeyed. They must influence the actions of those towards whom they are directed. As I argued in *Why people obey the law*: «A judge's ruling means little if the parties to the dispute feel they can ignore it. Similarly, passing a law prohibiting some behavior is not useful if it does not affect how often the behavior occurs (TYLER, 1990, p. 19)». Hence, «The lawgiver must be able to anticipate that the citizenry as a whole will...generally observe the body of rules he has promulgated (FULLER, 1971, p. 201)».

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Why do people obey or disobey laws? We frequently think of law as gaining its influence over people through their concern about the threat of being caught and punished for wrongdoing. This rational-choice or deterrence perspective suggests that the appropriate response to noncompliance problems is to increase the likelihood of being caught and punished for wrongdoing (i.e. to affect the perceived certainty of punishment), and/or the severity of punishment. The influence of the rational-choice approach to public policy is evident in the recent war on drugs in the United States, which has attempted to decrease drug use by increasing police presence and heightening penalties for drug use. In the area of intellectual property it is represented by the warning of possible fines and imprisonment which appears on home video cassettes, or similar warnings on CD's and tapes. By warning of possible severe penalties for illegal copying, it is hoped to lessen the incidence of illegal behavior. In both cases, the key assumption is that increasing the certainty and/or severity of punishment influences public law-related behavior.

## 2. THE INEFFECTIVENESS OF THREATS AS A METHOD OF INDUCING COMPLIANCE WITH LAWS

My first point is that research findings suggest that threats of punishment are largely ineffectively in changing law-related behavior. Studies suggest that people's assessments of the law's ability to catch and punish rule-breakers (i.e. the certainty of punishment) have, at best, a minor influence on law breaking behavior. This finding emerges from several recent studies of law related behavior. These studies demonstrate that judgments about the certainty of punishment often influence law-related behavior, while judgments about the severity of punishment have a smaller effect. However, they further suggest that such certainty effects are small in magnitude.

Across fourteen studies utilizing lagged tests from panel studies PATERNOSTER (1987) found small effects of risk judgments on law-related behavior. He found an average correlation of  $-.21$  between perceived certainty of punishment and drug use, and an average correlation of  $-.17$  between perceived severity of punishment and drug use. PATERNOSTER suggested that these small effects may have been due to confounds with other factors and concludes that «perceived certainty plays virtually no role in explaining deviant/criminal conduct» (p. 191). Other similar studies suggest a clearer role for instrumental risk judgments. They suggest that certainty, rather than being unimportant, plays a minor role in determining law related behavior (see NAGIN and PATERNOSTER, 1991; PATERNOSTER, 1989). TYLER (1990) utilized a panel study design to explore law related behavior among a sample of adults. His results suggest that judgments about the certainty of punishment play a minor role in law related behavior involving six everyday law related behaviors (such as shoplifting). Perceived severity, in contrast, appears to play no role (PATERNOSTER and IOVANNI, 1986).

All of the studies outlined have suggested that deterrence concerns have a clear, but minor, influence on law-related behavior. This conclusion is reinforced by the results of

a review of research on the antecedents of drug-related behavior (MACCOUN, 1993). That review concludes that variance in the certainty and severity of punishment accounts for approximately five percent of the variance in drug-related behavior. In other words, most of how people react to laws is not linked to risk judgments, so deterrence strategies based upon changing such judgments will have, at best, a minor influence upon law related behaviors.

### *Why is the Threat of Sanctions Ineffective?*

Why are risk judgments so strikingly unrelated to crime related behavior? One reason is that the judgment of risk has to be reasonably high to engage people and influence their behavior. For example, studies of deterrence suggest that estimates of the probability of being caught and punished only have an effect above a threshold level of risk (ROSS, 1982). But, in most crime-related situations objective risks are typically quite low. For example, the objective risk of being caught, convicted, and imprisoned for rape is 12%, for robbery 4%, for assault, burglary, larceny, and motor vehicle theft, 1% (ROBINSON and DARLEY, 1995b). Of course, the psychological estimates of risk are key to behavioral decisions – and research suggests that they are frequently lower than actual risks (ROBINSON and DARLEY, 1995b).

A similar type of risk estimate analysis has recently been applied to the deterrence of drunk driving (ROSS, 1982). The problem is not that raising probabilities to the level at which they have a psychological impact is impossible, but that it is prohibitive, both in economic terms and in terms of the willingness of citizens to accept intrusions into their personal lives. In other words, we might be able to create a situation in which deterrence strategies would work, but it would involve major changes in the nature of our society and legal systems.

Interestingly, ROSS suggests that even the intensive efforts of Scandinavian authorities to create high objective risks of arrest for drunk driving via the use of random road blocks and other similar expensive and intrusive law enforcement measures are insufficient to create and sustain an objective risk of arrest high enough to deter drunk driving. He suggests that the initial publicity flowing from a new law increasing penalties for law breaking may lead to exaggerated judgments of the likelihood of being caught and punished, and may lead to temporary decreases in law breaking behavior. However, such decreases are only sustainable for a few months, since experience soon teaches drivers that the objective risks of capture are less than they initially imagined. In other words, there are many problems involved in implementing deterrence based strategies.

Many of the problems involved in deterrence based strategies are structural and involve monitoring opportunities to break rules. In certain situations people have greater opportunities to break rules, and those situations pose more difficult problems for deterrence. For example, people who are self-employed have greater opportunities to cheat on their taxes than people whose income is primarily in the form of wages. As

would be expected, those with greater opportunities to cheat pose more difficulties for agencies whose job is to monitor compliance with the law.

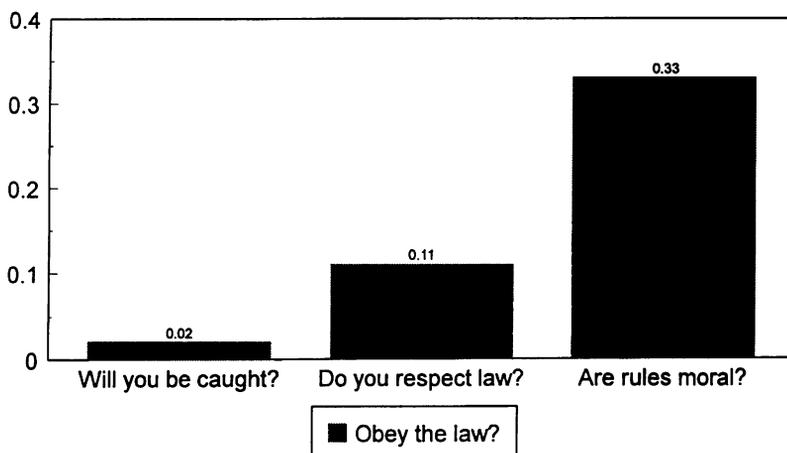
As this argument suggests there may be settings in which deterrence is an effective strategy. For example, in cases of homicide, the police catch, convict, and imprison 45% of offenders (ROBINSON and DARLEY, 1995b) – an objective risk high enough to produce a deterrence effect. Presumably this high rate of clearance reflects the large number of resources that society is willing to devote to resolving murders. Similarly, people whose income is primarily wage earnings have little opportunity to cheat on their taxes. Hence, in some natural settings deterrence is more likely to work, and it may work well in experimental settings (see, for example, STRAW, 1996). However, the everyday enforcement of rules in democratic settings does not occur in such a setting. This is especially true in the case of everyday laws, such as those involving traffic violations, minor thefts, etc., where the resources devoted to enforcement are moderate and the opportunities for cheating high.

As the findings outlined suggest, variations in the subjective probability and severity of punishment sometimes influence behavior, and sometimes do not. In the case of obedience towards the law in democratic societies, such risk assessments have only a minimal influence on behavior. Hence, seeking to control public behavior through threatening punishment is insufficient to gain widespread public compliance with the law. Deterrence can form the foundation of efforts to maintain legal order, but cannot be a complete strategy to achieve these objectives. To have an effective strategy for dealing with public compliance we need to have a situation in which citizens voluntarily obey the law. Hence, the effectiveness of laws is heavily dependent on gaining *voluntary* cooperation with the law. In other words, it is necessary to influence what people want to do in situations in which there is little or no threat of immediate punishment for wrongdoing. Such voluntary cooperation is key to the viability of the legal system.

### 3. GAINING VOLUNTARY COMPLIANCE WITH THE LAW

Gaining voluntary cooperation with the law involves creating internalized values that promote compliance. Research suggests two factors what are important to gaining voluntary compliance: morality and legitimacy. Morality is concerned with people's personal feelings about what is right or wrong. Legitimacy involves people's feelings that they ought to obey the law. Both of these factors promote voluntary compliance with the law.

TYLER (1990) directly compared sanction threats to the influence of morality and legitimacy in a panel study of citizens. He found that morality was the primary factor shaping law related behavior. A second important factor was views about the legitimacy of the law. In his study sanction threats had no independent influence on law-related behavior. The strength of each factor is shown in *Figure 1*, which indicates the beta weights when all factors are entered at the same time.

**Figure 1: Why do people obey the law?**

PATERNOSTER (1989) examined the antecedents of everyday law related behavior among a teenage sample. He compared the influence of sanction threats to that of moral beliefs and other factors. While sanction threats influenced behavior, he found that moral beliefs «dwarfed» the impact of such threats. Across all four behaviors studied, moral beliefs were more central to behavioral decisions than were judgments of the perceived certainty or severity of punishment.

GRASMICK and GREEN (1980) make a similar comparison using a sample of adults in an urban area. They find that moral judgments are equal in importance to judgments of risk when predicting past law violations, but that moral judgments dominate judgments about the likelihood of committing future crimes. Interestingly, their study also points to peer disapproval as an important element in law related behavior. A further study extends this analysis to tax cheating, theft and drunk driving (GRASMICK and BURSICK, 1990). That study finds that moral concerns are consistently as or more important than legal sanctions in explaining future intentions concerning crime. Again, this study finds that embarrassment in front of peers plays an important role in crime related behavior.

The studies outlined suggest the importance of morality and legitimacy as factors shaping people's law-related behavior. In each of the studies considered these factors independently influence law-related behavior. Further, they typically dominate people's behavior and have a greater impact than assessments of the likelihood of being caught and punished for wrongdoing. In other words, the way people behave is typically primarily a reflection of their views about: 1) what is right and wrong and 2) their obligations to law and legal authorities.

The studies outlined focus on the area of criminal justice. However, research on civil law suggests similar conclusions. For example, a recent study of intellectual property law violations yields similar conclusions. EINING and CHRISTENSEN (1981) studied the antecedents of illegal software use among business students. They found that judgments

about the likely consequences of illegal use influenced frequency of use ( $\beta = .19$ ). However, a more important factor was attitudes about the morality of illegal use ( $\beta = .36$ ).

Further, PATERNOSTER and SIMPSON (1996) found that moral values had an important influence on whether people committed corporate crimes. Their study involved interviews with business students and executives faced with hypothetical situations in which they might break rules. They find that moral considerations exert a «powerful and independent source of social control (p. 579)». Further, moral values constrain the operation of risk judgments. If people feel that actions are immoral, considerations of gain or loss become «virtually superfluous (p. 549)». It is only when people lack moral feelings about an issue that risk judgments have an important influence on behavior.

Issues of morality do not only matter when law-related behavior is the central concern. They are also found to affect political behaviors, ranging from whether people engage in political protests (see OPP, 1996) to whether they vote (GUTH and WECK-HANNEMANN, in press).

#### 4. THE LEGITIMACY OF THE LAW

One important force leading to compliance is the feeling of obligation to obey the law – legitimacy. While much of the research outlined focuses on morality, it is legitimacy that is central to the effectiveness of authorities. Legitimacy has an advantage over morality in that when the law is viewed as legitimate people feel that they «ought to obey» all laws, not just those that are consistent with their own moral principles. Hence, legitimacy is a more widespread, «blanket» endorsement of law abidingness than is morality. If authorities are legitimate, people are generally willing to accept the rules they create, whatever those rules might be (TYLER, 1990). For this reason, the focus of this discussion will be primarily on the antecedents of legitimacy.

The importance of legitimacy to compliance suggests that one reason that Americans obey the law is their general respect for the law. Surveys suggest that feelings of respect for the law have traditionally been quite high among Americans (TYLER, 1990), and that such feelings are related to compliance with the law. A legitimacy based strategy for increasing compliance with law draws upon general respect for law, i.e. on the perceived obligation to obey.

The difficulty with a legitimacy based strategy is that public respect for the law and legal authorities has been steadily declining over the past fifty years (LIPSET and SCHNEIDER, 1983). As a consequence, there is less of a «reservoir of good will» upon which authorities can draw when seeking to gain compliance with the law. At this time dissatisfaction with the law and legal system is widespread and the public generally holds lawyers and judges in low regard. Studies of the courts indicate that large proportions of the American public indicates low levels of confidence in legal authorities. For example, during the period 1972 to 1987 only 30% to 40% of Americans were found to express

«a great deal of confidence» in the United States Supreme Court as an institution of government (National Opinion Research Center, University of Chicago, General Social Survey). Further, the public expresses dissatisfaction with local courts and laws (SARAT, 1977). For example, national surveys indicate that between 1970 and 1980 around 80% of adult Americans indicated that the courts are «too lenient» on criminals. Similarly, the courts are faulted for letting too many guilty people go free, for having too many legal «technicalities», and for giving defendants too many rights and too much respect and concern. While these grievances are directed at issues of criminal law, there is no evidence that the public distinguishes the handling of criminals from civil laws.

The lack of public confidence in legal authorities is creating a number of problems for the legal system. One problem is increasing difficulty securing the acceptance of legal decisions and with laws. In addition, there is increasing public acceptance of citizens who take the law into their own hands, as reflected in lessened verdicts by juries (ROBINSON and DARLEY, 1995a). Further, the public has supported initiatives which restrict legal authority, such as the recent «three strikes» initiative in California (TYLER and BOECKMANN, 1996). In all of these ways, people are less willing to defer to the law and to legal authorities.

Within society and the legal community there have been increasing calls for the rebuilding of social capital – i.e. the faith of citizens in the government and in each other (PUTNAM, 1993). Such appeals for the recreation of civic virtue resonate well with the suggestion that increased legitimacy would aid those seeking to heighten compliance with laws.

## 5. THE PROCEDURAL BASIS OF LEGITIMACY

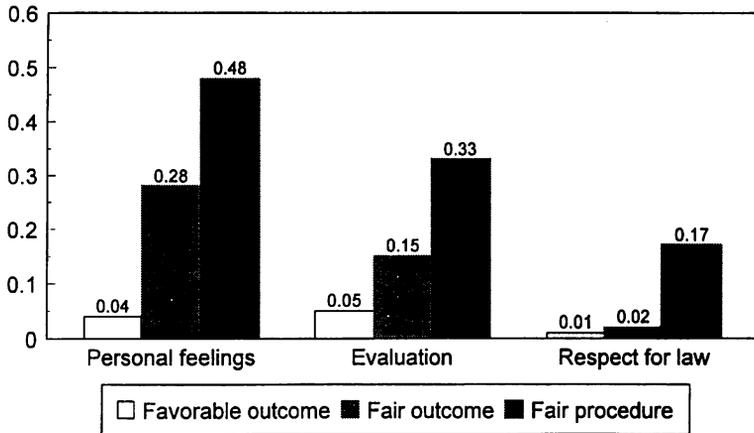
The key to a strategy for rebuilding legitimacy lies in the findings of research concerning the antecedents of legitimacy. If legitimacy is to be created or maintained, it is important to understand why people think that authorities are legitimate or not legitimate.

The research which will be outlined here suggests that the antecedents of legitimacy lie in people's judgments about the *procedures* through which legal authorities make rules. In other words, people defer to rules primarily because of their judgments about how those rules are made, not their evaluations of their content. Judgments about the fairness of decision-making authorities have been found to be more central to their legitimacy, and to people's willingness to accept them, than are judgments of decision favorability. In other words, people are willing to defer to laws and legal authorities on procedural justice grounds (LIND and TYLER, 1988; TYLER and LIND, 1992).

Let me give a specific example, drawn from TYLER (1990). This study examines people's reactions to their experiences with police officers and judges. It compares the influence of people's judgments about three factors in their experience: the favorability of the outcome received, the fairness of the outcome received, and the fairness of the procedure. The impact of experience on three issues is examined. Those issues are:

personal feelings following the experience (angry-pleased), evaluations of the legal authority involved, and respect for the law (legitimacy). The results of the study are shown in *Figure 2*. In *Figure 2* the columns reflect the strength of beta weights for an equation in which all three terms are entered at the same time. They indicate that judgments about procedural justice dominate the impact of experience on all three dependent variables.

**Figure 2: How does experience influence people's feelings about law and legal authority?**



The procedural justice findings noted have been widely replicated in studies of the legal system. These include studies of trial procedures (CASPER, TYLER, and FISHER, 1988; ADLER, HENSLER, and NELSON, 1983; LIND, KULIK, AMBROSE, and DE VERA PARK, 1993; MACCOUN, et al, 1988; TYLER, CASPER, and FISHER, 1989, TYLER, 1984), as well as more general studies of the decisions of legal and political authorities (TYLER, 1993; TYLER, 1994; TYLER and CAINE, 1981; TYLER and MITCHELL, 1994; TYLER, RASINSKI, and MCGRAW, 1985).

The predominance of procedural justice issues is especially striking in the case of impact on legitimacy. This finding is similar to that of a recent study of people on trial for felonies. For example, TYLER, CASPER, and FISHER (1989) found that only procedural justice, and not outcome favorability, affected the influence of having a case handled by the legal system on views about that system.

On a public policy level, evaluations of national level authorities have also been found to be responsive to judgments about the fairness of their decision-making procedures. In a study of the United States Supreme Court, TYLER and MITCHELL (1994) demonstrated that the legitimacy of the court was linked to judgments about its fairness. Other studies link the legitimacy of the executive to similar procedural concerns (TYLER, RASINSKI and MCGRAW, 1985). In addition to the evaluation of authorities, the fairness of procedures shapes peoples' willingness to accept policies, both in natural settings such

as decisions concerning the siting of nuclear waste facilities (FREY and OBERHOLZER-GEE, 1996; OBERHOLZER-GEE, BOHNET, and FREY, 1996) and in experimental games (FROHLICH and OPPENHEIMER, 1990).

It is also important to note that procedural effects occur when important outcomes are involved. For example, LIND, KULIK, AMBROSE, and DE VERA PARK (1993) studied corporate and individual litigants in Federal Courts. The disputes they considered involved amounts of money up to \$800,000. In each dispute those involved engaged in mediation (pretrial arbitration) which resulted in a proposed voluntary settlement. The key question considered is whether the parties voluntarily accepted this decisions, or went on to have a formal trial. This decision was most strongly affected by judgments about the fairness of the mediation procedure ( $\beta = .47$ ), and secondarily by the objective favorability of the outcome ( $\beta = .20$ ).

The LIND, KULIK, AMBROSE, and DE VERA PARK study also shows that procedural judgments influence actual behavior, in this case acceptance of a mediation award. A similar effect has also been found in a study of the willingness to accept mediation awards in automobile accident mediations (MACCOUN, LIND, HENSLER, BRYANT, and EBENER, 1988). Other studies also support the suggestion that procedural judgments influence behavior. PRUITT, PEIRCE, MCGILLICUDDY, WELTON, and CASTRIANNO (1993) studied the degree to which mediation agreements were being complied with 4 to 8 months after they were made. They found that judgments about the fairness of the mediation session predicted such compliance, while the objective favorability of the agreements did not. Such effects are not limited to decision acceptance. TYLER (1990) also found that the fairness of procedures influenced subsequent compliance with the law.

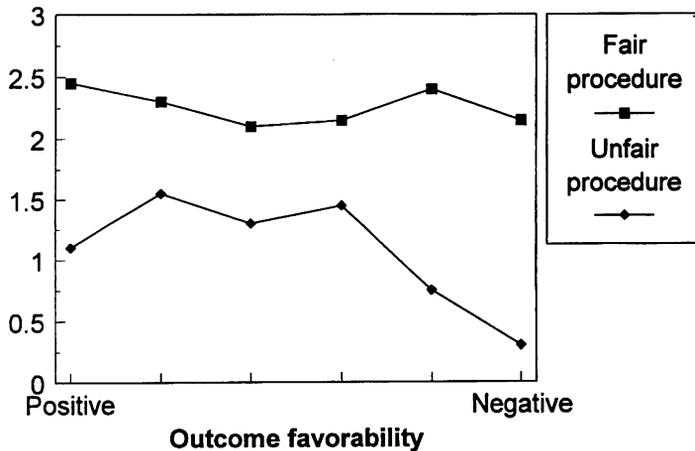
Further, PATERNOSTER, BRAME, BACHMAN, and SHERMAN (in press) found that the fairness of the actions of police officers called to the scene of a domestic assault predicted the rate of subsequent domestic violence. Similarly, FONDACARO and DUNKLE (1996) found that the fairness of the procedures used by parents to resolve a conflict with their adolescent child was the best predictor of subsequent deviant behavior by that child. Behaviors in reaction to public policies are also affected by procedural judgments. For example, tax compliance is shaped by the fairness of the procedures used to make tax policy (POMMERHNE and WECK-HANNEMANN, 1996).

## 6. THE BASIS FOR VIABLE GOVERNANCE

The importance of the finding that the legitimacy of authorities is linked to the fairness of the procedures they use to make decisions lies in the possibility that authorities can bridge differences among various groups and individuals in society by dealing with those individuals using fair procedures. The findings of TYLER (1990) suggest considerable support for this perspective. Consider the feelings that people have after dealing with a legal authority, shown in *Figure 3*. If people evaluate the procedures used to be fair, they

have positive feelings irrespective of the outcome. On the other hand, if people evaluate the procedures used to be unfair, then a negative outcome produces negative feelings.

Figure 3: Procedural fairness and feelings toward authorities

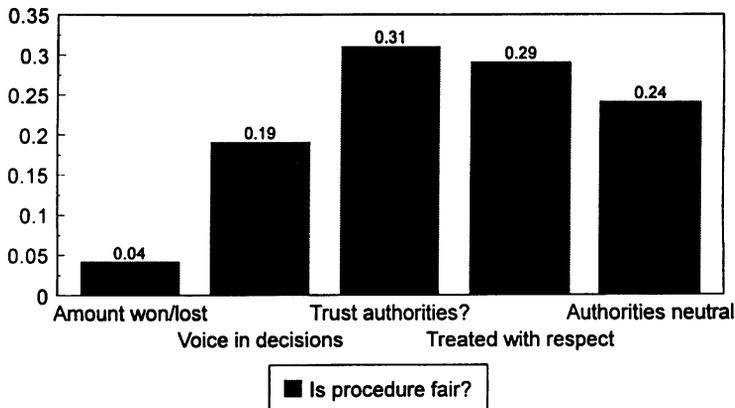


Higher numbers indicate more favorable feelings after the experience.

## 7. WHAT IS A FAIR PROCEDURE?

These procedural justice findings have interesting implications for efforts to draw upon legitimacy to create support for the law. The primary implication is that such efforts should be based upon an understanding of which procedures for creating and implementing laws citizens regard as fair. To develop such a strategy, we need to understand how people assess the fairness of procedures. Studies suggest that four issues dominate procedural justice judgments: trust in authorities, quality of treatment, evidence of neutrality, and participation/voice.

Consider the study which has already been outlined – citizen experiences with legal authorities (TYLER, 1990). That study compared the importance of five issues in defining the fairness of legal procedures: the favorability of the outcome (the amount won or lost); voice/participation in decisions; trust in the motives of authorities; quality of interpersonal treatment; and the neutrality of the authorities. A regression analysis comparing the influence of each element on overall assessments of procedural fairness (shown in *Figure 4*), suggests that the four most important elements were: trust in the motives of the authority; the quality of interpersonal treatment; neutrality; and voice.

**Figure 4: Influences on judgments about whether a legal procedure is fair**

### *Trustworthiness*

The first issue in people's reactions to legal procedures are their judgments about the trustworthiness of legal authorities. If people feel that the authorities making legal rules are «trying to be fair» to them, they are much more willing to accept those rules. In fact, research suggests that trust in the motives of authorities is a central factor underlying the willingness to obey legal rules (TYLER and DEGOEY, 1996). Interestingly, this is true of both situations in which people have personal experiences with authorities (i.e. local judges), and of people's reactions to laws passed by Congress and decisions made by the Supreme Court. For example, when citizens are reacting to laws passed by Congress, the primary reason they obey those laws is that they think that Congress is concerned about them, and trying to do what is right for all citizens. Citizens are also affected by judgments that Congress is neutral, and treats all citizens equally.

How can lawyers and judges communicate that they are trying to be fair? A key antecedent of trustworthiness is justification. When presenting their decisions, authorities need to make clear that they have listened to and considered the arguments presented. They can do so by explaining why they are making their decisions.

Trust is a general concept and could potentially reflect concerns about a variety of aspects of the authority. Studies suggest that the particular aspect of legal authorities that is most central to the willingness of people to accept their decisions is trust in their benevolence. In other words, people focus most heavily on whether or not they think that the mediator, lawyer, or judge they are dealing with cares about them and their problems and is truly trying to find a solution that is good for them (TYLER and DEGOEY, 1996). This is ironic, since most legal training focuses on issues of competence in understanding and interpreting the law. This aspect of authoritative-ness is referred to as neutrality, and will be discussed below.

Interestingly, there is considerable evidence that the basis of authoritativeness (e.g. of the ability to gain voluntary acceptance from members of the public) is changing from neutrality-based to trust-based. Neutrality-based authority gains credibility through signs of professionalism and expertise, e.g. the evenhanded application of rules, lack of bias, use of facts, rules, and procedures, etc. Such signs of «professionalism» make the particular authority dealt with a minor issue. A person, for example, can go to any police officer or judge and receive uniform, consistent, treatment and decisions. Increasingly, however, there are suggestions that this type of authority is less compelling to the public. Instead, people are focusing on their views about the morality and benevolence of the authority with whom they are dealing. This focus on trustworthiness leads to an interest in knowing the particular authority with whom one is dealing. As a consequence, it encourages personal connections between citizens and authorities, and deference based on a knowledge of the authorities' history and values.

An example of the encouragement of trust-based authority can be seen in the recent movement towards community-based policing (TYLER and KERSTETTER, 1994). In an earlier historical period police officers walked neighborhood «beats». Consequently, they knew the members of the community their policed, and were known by that community. Their authority developed from a personal history, which led to trust in their motives and values. That model of policing was then replaced by a model which emphasized «professionalism» in policing. Police officers were removed from everyday contact with particular groups of citizens. Instead, they exercised authority over large areas and their authoritativeness was linked to professional training and conduct (i.e. to neutrality). Ironically, recent changes towards community-based policing reflect a move back to the earlier trust-based model. Those changes are being encouraged by declining confidence in the professionalism of the police. Hence, individual police officers need to develop personalized connections with people in the community. In essence, authorities need to create their own legitimacy on an individual basis. They cannot rely on the general legitimacy which they may have as a member of the police force.

Why is trust such a central issue to those dealing with authorities? An important clue is provided by research on people's judgments about the legal system (TYLER, 1990). In a study of citizens in Chicago it was found that citizens recognized the widespread existence of unfair treatment on the part of the police and courts. However, when asked what would happen if they dealt with the police or courts, over 90% predicted that they would be treated fairly. Hence, people have an illusion of benevolent – a distorted sense that they are secure. Whenever people deal with legal authorities, this illusion is potentially open to question.

Trust is also important because it speaks to the future. Judgments about current intentions allow people to predict the future, since intentions develop from a person's character – which people view as generally stable and unchanging. Since people are long-term members of a society, their loyalty depends on their predictions about what will happen in the long-term. For this reason, people's attitudes towards authorities depend as their judgments about the benevolence of authorities. If they believe that the

authorities are trying to be fair and to deal fairly with them, they develop a long-term commitment to society.

The importance of trustworthiness suggests that a central goal in citizen involvement with legal authorities is to reestablish the social connection between citizens and legal authorities that underlies feelings of trust in the motives of leaders (see TYLER and DEGOEY, 1996). If citizens trust that their leaders are trying to do what is best for them, they defer voluntarily to legal rules. This means that people need to believe that the authorities with whom they are dealing care about them and about their problems.

### *Dignity and Respect*

Another important element in people's reactions to legal authorities is linked to the interpersonal respect they experience through their treatment by authorities. Studies suggest that being treated politely, with dignity and respect, and having respect shown for one's rights and status within society, all enhance feelings of fairness. These findings are especially striking in that such interpersonal treatment is essentially unrelated to the manner in which their dispute is resolved.

The importance of interpersonal treatment is emphasized by the findings of a RAND study on satisfaction with alternative forms of adjudication (LIND, MACCOUN, EBENER, FELSTINER, HENSLER, RESNIK, and TYLER, 1990). Their findings suggest that «the perception of procedural dignity was the crucial variable leading to higher procedural fairness ratings for trials than for bilateral settlements (p. 981)». Dignified treatment matters because it shows that «the civil justice system took the litigants and the dispute seriously». «After all, the trial was in all likelihood one of the most meticulous, most individualized interactions that the litigant had ever experienced in the course of his or her contacts with government agencies». The way that one is treated during this experience carries important messages concerning social status, self-worth, and self-respect.

Reaffirming people's sense of their standing in the community can be as or more important than solving their problems. For example, studies suggest that the police have little hope of solving residential burglaries unless they arrive soon after the crime. Hence, efficiency minded police administrators have argued that the police should not even come out to people's homes – they should have them submit a written form detailing damages and losses. However, from a psychological perspective, this ignores the important symbolic role of being allowed to call on the police for their services in times of need. If the police do respond, and take the citizens' complaint seriously, then public views about the police remain high in the aftermath of victimization (PARKS, 1976). The police have reaffirmed the person's right to call upon the authorities during times of trouble.

### *Neutrality*

People are also influenced by judgments of the neutrality of decision-making procedures. Neutrality includes assessments of honesty, impartiality, and the use of fact, not personal opinions, in decision-making. Basically, people seek a level playing field in which no-one is unfairly advantaged. Since people are seldom in the position to know the «correct» outcome, they focus on evidence that the procedures were even-handed. It has already been noted that people focus on procedural justice in situations in which the correct outcome is unclear. Similarly, people focus on neutrality when the appropriate outcome is unclear.

### *Participation*

Finally, people feel more fairly treated if they are allowed to participate in shaping decisions which affect the resolution of their problems or conflicts. The positive effects of participation have been widely noted. THIBAUT and WALKER (1975) found that participation in trials underlies judgments that the adversary system is fair, while participation has been found to enhance the fairness of plea bargaining, sentencing hearings, and mediation.

Voice effects have not been found to be dependant on having control over outcomes. Instead, people have been found to value the opportunity to express their views to decision-makers in and of itself. For example, victims value the opportunity to speak at sentencing hearings, irrespective of whether they influence the sentences criminals receive (HEINZ and KERSTETTER, 1979). Interestingly, lawyers and judges often oppose sharing control because they think that people want to share control over the final decisions in a case. In fact, people are primarily interested in sharing the discussion over the case, not decisions about how to handle it. Ethnographic studies of narratives in courts indicate that people want to tell their story, but that they look to legal authorities (lawyers) to put that story into legally relevant form and to make decisions about which legal principles apply to it (judges) (CONLEY and O'BARR, 1990). Hence, people are satisfied even when they lose, if they have had suitable opportunities to express their sense of what the problem is and how it should be handled.

An interesting additional benefit of allowing each side to state their case is that the other side hears their story. Disputants typically enter the legal system believing that justice is on their side. In fact, studies of disputants suggest that they often see little justice in the other parties' case. However, hearing the other side of the case presented to a third party allows each side to see that, in fact, there is another side to the case. Since, the willingness to compromise is crucial to success in mediation, this is an important added benefit of mediation.

The finding that people value the opportunity to participate by expressing their opinions and stating their case explains several seemingly paradoxical findings in studies

of differing legal forums. The first finding is that mediation is more popular than adjudication in the resolution of small claims and civil cases (MCEWEN and MAIMAN, 1981). For example, 71% are likely to fully comply with a mediated settlement, 34% with an adjudicated settlement. Why? After mediation 44% of the time both parties view the settlement as fair, after an adjudicated settlement both parties view the settlement as fair 24% of the time. MCEWEN and MAIMAN attribute these findings to the greater opportunities for participation allowed by mediation.

The second finding is that plea bargaining is rated as a more fair procedure than a trial by defendants on trial for felonies (CASPER, TYLER, FISHER, 1988). For example, among those who received an average prison sentence 52% rated plea bargaining fair, while only 24% rated their trial fair. Among those who received a heavy sentence 15% rated plea bargaining fair, while 0% rated their trial fair. In both cases, litigants indicated that they felt they had greater opportunities to participate in the more informal procedure.

The idea that informal judgments of justice may depart from the formal structures of the court is further supported by a study of the Pittsburgh Court-Administered Mediation Program (ADLER, HENSLER, and NELSON, 1983). That study found that 75% of cases referred to mediation were settled. Mediation was generally rated as a satisfactory procedure for dispute resolution, ratings which were linked to judgments that it was fair. An analysis of the meaning of fairness indicated that litigants had an informal «fair hearing» standard against which they evaluated their experiences. Receiving fairness involved: 1) having an adequate chance to state one's case and 2) having an unbiased, impartial decision-maker. Both of these elements of subjective fairness were met by mediation.

The importance of participation also explains another finding of studies of the legal system – that people view settlement conferences as unfair (LIND, MACCOUN, EBENER, FELSTINER, HENSLER, RESNIK, and TYLER, 1990). In a settlement conference the judge and lawyers typically negotiate an agreement, often without the client present. Lawyers are often surprised when they present their clients with what they regard as a favorable settlement, only to be met by anger and hostility. Such negative feelings are easily understood from a participation perspective. Clients want to be involved in the solution of their cases.

## 8. WHY ARE SUBJECTIVE EVALUATIONS IMPORTANT?

The reason that it is important to focus on these issues is that the key to developing an effective strategy in any area of law is to better understand how the public currently views, the legitimacy of laws. For example, are laws regarded as illegitimate efforts by corporations to enrich themselves at public expense? If so, what is the range of those public feelings? Do people view stealing from stores, speeding, using drugs, and stealing pencils from work within the same general framework of alienation from institutions? Or do they differentiate among various forms of illegal action? Such knowledge is needed

to understand the nature and extent of public feelings that legal authority is illegitimate and need not be obeyed.

## 9. THE MORALITY OF RULE-BREAKING

Although legitimacy is central to the effectiveness of legal authorities, it is also important to consider the other type of internalized obligation which shapes people's relationship to the law – morality – people's feelings about what is right or wrong. In my own research on law breaking, I found that morality was the most important factor shaping law-related behavior. In other words, people did not simply do what they thought they might gain from doing. Their behavior was influenced by their own personal sense of right and wrong.

The suggestion that people's behavior is influenced by justice-based judgments is supported by widespread research on law related behavior, as well as by studies in related areas such as negotiation and interpersonal relations (TYLER, BOECKMANN, SMITH, and HUO, 1997; TYLER and SMITH, 1997). Most people are found to give little or no consideration to the possible gains and losses associated with illegal behavior. Instead, they simply engage in the behavior that they think is morally right. Given the low probabilities of punishment associated with many types of criminal behavior, it is crucial to the success of laws that most Americans regard law-breaking as generally immoral. Of course, such feelings differ widely depending upon the type of law involved. People do not uniformly regard law-breaking as morally wrong – their attitude differs for varying types of illegal behavior.

Recognizing the importance role of moral values in stimulating law abiding behavior leads to two strategies for increasing public compliance with laws. The first involves trying to understand public feelings about what is fair. This effort flows from the recognition that the public is most likely to engage in illegal behavior when the formal law diverges from public views about what is fair (ROBINSON and DARLEY, 1995a). In other words, the law can have an important symbolic function if it accords with public views about what is fair, but it loses that power as the formal law diverges from public morality.

There is considerable evidence that there is widespread value consensus within American society about what is right and wrong (TYLER, BOECKMANN, SMITH, and HUO, 1997). For example, studies of public views of crime indicate widespread agreement about what behaviors are and are not criminal, as well as the severity of different types of «crimes». An understanding of such public feelings would allow legal authorities to tap into those sentiments in seeking compliance with the law.

An example of an effort to utilize an understanding of public feelings in designing legal policies occurs in the area of affirmative action policy. Studies suggest that the public is generally opposed to affirmative action policies. However, that support varies widely depending upon the manner in which the policy is implemented. For example,

KRAVITZ and PLATANIA (1993) presented students with affirmative action plans that varied in their characteristics. They found that support for such policies varied dramatically depending upon how the policies were implemented. Hence, the public strongly opposed affirmative action policies presented to them in some ways, but was much more supportive of very similar policies that were differently framed.

What I would like to emphasize here is that the findings of willingness to support affirmative action policies worded in particular ways were true of white males, as well as minority and female respondents. In other words, the people who have least to gain from supporting any form of affirmative action were still responsive to variations in the form of the policy, and willing to support some forms of such policies. LEA, SMITH and TYLER (1995) interviewed a sample of citizens and demonstrated that such variations in support were linked to judgments about the fairness of the policy, rather than to differences in the degree to which the policies were viewed as helping or hurting the person interviewed. In other words, people were making judgments in ways that reflected their moral views about what was fair or unfair, not simply their immediate individual or group interests.

A second important implication of the importance of morality to law abiding behavior is that we need to create and maintain a moral climate that supports formal laws. The public needs to be socialized into acceptance of moral codes that support formal legal rules. It is the creation of such a moral climate that supports the law. For example, while there have been widespread complaints about the behavior of Americans, in areas as varied as traffic laws and tax paying, in fact Americans have traditionally been broadly law-abiding. Studies of citizen behavior suggest that Americans both feel strongly obligated to obey the law (TYLER, 1990) and generally do so in their everyday lives. Hence, American law has traditionally benefitted from American legal culture. Of course, this has not been universally true – as is evidenced by failures such as laws on the prohibition of drinking and drug use. In general, however, Americans have been socialized into a culture that has supported law abiding behavior. From this perspective it is troubling that recent evidence suggests that the public increasingly sees formal law as departing from morally correct solutions to a wide variety of crimes (DARLEY and ROBINSON, 1995).

Part of the allure of deterrence strategies is their seeming simplicity. By threatening people with heightened probabilities of punishment, behavior can be altered. As has already been noted, such deterrence strategies are, in fact, difficult to implement effectively. Hence, they only seem simple in the abstract. However, strategies based upon moral education are clearly not simple or short-term in character either. They require the creation of an appropriate moral climate through socialization. While clearly more difficult and long-term in character, such strategies have the benefit of more strongly affecting public behavior towards the law.

How might moral development strategies be implemented? Research in the area of moral development suggests that discussions can promote moral development and lead to attitudinal changes which last over time (see REST and THOMA, 1985). In other words,

we need to use procedures such as dialogue to create an awareness of and commitment to the moral principles that underlie formal laws. In particular, people's awareness of the reasons for particular rules, as well as for rules in general, needs to be more effectively developed, so that a basis for a positive moral climate can be created.

## 10. CONCLUSION

The key point of this paper is the suggestion that reliance only upon threats of punishment to enforce laws is a strategy which is likely to be ineffective. Research in many areas of law suggests that such threats matter, but have, at best, a minor influence on law-related behavior. Instead, legal authorities need to focus on creating the values which underlie voluntary compliance with the law: legitimacy and morality.

The argument outlined suggests the need to focus on social values when trying to understand why there is sometimes widespread non-compliance with laws and when designing strategies to gain increasing compliance with laws. Two such values are the belief that following a law is the morally right thing to do, and the belief that laws and legal authorities are legitimate and ought to be obeyed.

In the case of the legitimacy of the law, laws benefit from a general climate of respect for the legal system. Unfortunately, respect for law has been declining among Americans. Hence, what is needed (at least in the United States) is an effort to revitalize and relegitimize legal authorities. How can law relegitimize itself?

The key research finding outlined in this review is that people view laws and legal authorities as legitimate if they enact and implement laws and legal decisions following fair procedures. Hence, any effort to revitalize law must focus upon public judgments about the fairness of the procedures through which laws are created and enforced.

It is encouraging that research suggests that experiences with legal authorities that involve fair procedures can enhance feelings of legitimacy and obligation (TYLER, 1990). In other words, law can relegitimize itself, and it can do so through the use of legal procedures that the public views as fair.

The recognition that procedural fairness judgments drive the creation and maintenance (or decline) of legitimacy suggests the need to explore the meaning of fair procedures in the context of citizen judgments about the legal arena (see LIND and TYLER, 1988; TYLER and LIND, 1992). Understanding what people want in a legal procedure helps to both explain public dissatisfaction with the law and point towards directions for building public support for law in the future.

In the case of morality, people are strongly affected by their judgments about the morality of breaking various types of laws. Hence, we need to create a moral climate which clearly associates various forms of property law with public morality. Either through framing law in terms of existing morality or by working to change morality, the formal law needs to be brought into line with public feelings. To do this, we need a better

understanding of public morality. We need to know what the public views as fair and unfair.

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#### SUMMARY

First it is shown that it is difficult to enforce the law using only the threat of punishment. Authorities need the willing, voluntary compliance of most citizens with most laws, most of the time. Second, such voluntary compliance is linked to judgments about the legitimacy of authorities and the morality of the law. Third, public views about the legitimacy of legal authorities are linked to judgments about the fairness of the procedures through which those authorities make decisions. Finally, an important element in procedural justice judgments involve evaluations of the manner in which authorities treat citizens. Taken together, these findings suggest that an important component of the effective exercise of authority involves non-instrumental issues. By including such non-instrumental concerns in the study of compliance with the law we can more completely understand the dynamics of obedience with social authorities.