

CHAPTER 35

Psychology and the Law

Reconciling Normative and Descriptive Accounts of Social Justice and System Legitimacy

TOM R. TYLER
JOHN T. JOST

The fundamental problem of a correct psychological doctrine is not why a hungry man steals but the exact opposite: Why doesn't he steal?

—REICH (1934/1989, p. 158)

The legal system is a codified set of rules developed to regulate interactions and exchanges among people. The authorities who make and implement legal rules draw on a fairly wide range of sources in seeking to understand, predict, and control human behavior. Some of these sources are purely cultural, in the sense that they reflect received wisdom that is passed down within specific traditions, including philosophical, civil, and political traditions. These traditions contain commonsense explanatory frameworks for understanding and regulating human behavior—"folk psychologies" in which behavior is caused by individual beliefs, desires, and intentions (e.g., Dennett & Haugeland, 1987). The extent to which folk psychology is accurate is a matter of persistent debate among philosophers, cognitive scientists, and others (Greenwood, 1991; Wegner, 2002), but there can be little doubt that it is pervasive and influential in legal contexts and countless other social situations (e.g., Malle, 2004).

In addition to cultural sources of knowledge concerning the putative causes of human behavior, there are also scientific sources that may be considered (to varying degrees) by legislators, judges, juries, and other legal decision makers when they are creating and implementing laws. The possibility exists, therefore, that current scientific opinion about the "facts" of human nature can influence the legal system (see Blasi & Jost, 2006). Research on core topics in law and psychology—including the accuracy of eyewitness testimony, the fairness of police line-ups, jury decision making, and attitudes toward the death penalty—has affected legal practice, at least to some degree (e.g., Ellsworth & Gross, 1994; Hastie, Penrod, & Pennington, 1983; Heuer & Penrod, 1989; Köhnken,

1996; Loftus, 1979; Monahan & Loftus, 1982; Wells, Leippe, & Ostrom, 1979). There is also the possibility that psychology can motivate attempts to reform the legal system (i.e., to make laws more just), at least in part because it can provide a more accurate set of facts about the causes and consequences of human behavior (e.g., Carson, 2003; Haney, 1993; Kang, 2005; Krieger, 1995). In this way, psychology can contribute to the actual (as well as perceived) legitimacy of the legal system, although this process may be very slow indeed because of obstacles to interdisciplinary collaboration in general as well as the institutional conservatism inherent in legal and other social and political systems (e.g., Blasi & Jost, 2006; Meyer & Rowan, 1977; Zucker, 1977).

THE AIMS AND ACHIEVEMENTS OF PSYCHOLOGICAL JURISPRUDENCE

Psychology can contribute to the field of law by providing legal scholars with the most accurate and up-to-date understanding of scientific knowledge possible in those areas of psychology that are most relevant for the legal system. We refer to this endeavor as *psychological jurisprudence*—the effort to shape law through knowledge of human psychology (Darley, Fulero, Haney, & Tyler, 2002). As has already been suggested, psychology as a discipline is always centrally relevant to the law, whether or not legal authorities recognize it. This is because, as Haney (1982) put it, "Laws embody theories of behavior. Legal rules, doctrines, and procedures necessarily reflect basic assumptions about human nature" (p. 191).

Psychological jurisprudence thus reflects a distinctly empirical perspective on the problems presented by the law. From this perspective, the legal conception of human action and responsibility should be based on scientific research addressing cognition, motivation, and behavior (see also Darley et al., 2002; Kang, 2005; Krieger, 1995). Much like proponents of the *legal realism* movement, we argue that the roots of effective legal doctrine must lie in an accurate understanding of the nature of the social world. Psychological jurisprudence carries this basic premise further by exploiting the methodological tools of psychology, including experimentation, in order to achieve *behavioral realism* (see also Blasi & Jost, 2006; Kang & Banaji, 2006; Krieger & Fiske, 2006). From this perspective, legal doctrines should have a strong empirical basis and should be linked explicitly to scientific evidence concerning the principles of human nature.

The Scope of This Chapter

The goal of psychological jurisprudence, as we have suggested, is to make legal assumptions about human nature as consistent with contemporary psychological knowledge as possible, that is, to close the gap between folk and scientific theories of the person. At the same time, it must be acknowledged that psychology is an evolving discipline, and scientific consensus about specific determinants of human behavior will change as new research results emerge. It is quite possible that a chapter on psychology and law 25 years from now will endorse different psychological principles than the ones that we emphasize today. What presumably will not change is the underlying value of shaping law with some attention to empirical conclusions drawn from contemporary psychological research.

In this chapter, we make no attempt to cover all the areas in which psychology is relevant to the field of law. Topics such as violence and the media, mental illness and criminal responsibility, the battered woman syndrome, eyewitness memory, effectiveness of polygraph tests, jury instructions and decision making, group profiling, and attitudes toward sentencing and capital punishment are reviewed comprehensively by Ellsworth and Mauro (1998) and are not revisited here. Instead, we focus on the implications of basic social psychological research for understanding human motivation in general and the specific types of motivation that lead people to obey the law and comply with legal authorities. Legal scholars and decision makers, we submit, would benefit considerably by reconceptualizing their approaches to regulation and taking into account a wider variety of instrumental and symbolic motivations, including the genuine desire to adhere to moral principles that are espoused by legitimate authorities on behalf of a just social system.

LAW AND THE PSYCHOLOGY OF HUMAN MOTIVATION

One of the main functions of the law is to regulate the behavior of the citizenry by maximizing the likelihood

that people will comply with normative standards of conduct—that is, with socially shared definitions of acceptable conduct as they are enshrined in rules, norms, and laws. If the law is to be effective in fulfilling its regulatory role, most citizens must obey most laws most of the time (Easton, 1975; Tyler, 2006b). The need for legal authorities to secure compliance has been widely noted by legal scholars and social scientists. Fuller (1969), for instance, observed that “the lawgiver must be able to anticipate that the citizenry as a whole will . . . generally observe the body of rules he has promulgated” (p. 201). Decisions made by police officers and judges mean little if people fail to take them seriously, and laws lack importance if they do not affect public behavior (Tyler, 2006b; Tyler & Huo, 2002).

Although widespread behavioral compliance is necessary to the effective functioning of society, obtaining compliance cannot be taken for granted (e.g., Sherman, 1993). Because many laws restrict the ability of individual citizens to behave as they wish, people sometimes resist them. Mastrofski, Snipes, and Supina (1996) note that “although deference to legal authorities is the norm, disobedience occurs with sufficient frequency that skill in handling the rebellious, the disgruntled, and the hard to manage—or those potentially so—has become the street officer’s performance litmus test” (p. 272). Their observational study of police encounters with the public in Richmond, Virginia, provides useful evidence concerning the frequency of noncompliance. Mastrofski and colleagues estimated an overall noncompliance rate of 22%. Citizens failed to comply with police requests 18% of the time when they were told to cease illegal behavior, 19% of the time when they were told to leave another person alone, and 33% of the time when they were instructed to stop some form of disorder. Similar results were obtained in a replication by McCluskey, Mastrofski, and Parks (1998) in Indianapolis and St. Petersburg. The overall noncompliance rate was 20%. Citizens resisted 14% of the time when asked to leave another person alone, 21% of the time when ordered to cease illegal behavior, and 25% of the time when told to stop engaging in disorder.

These studies investigated short-term compliance—that is, whether the person behaved as instructed—and not whether people willingly accepted the decisions made by the authorities, bought into their resolution of a problem, or believed that the restrictions on their behavior were reasonable or appropriate. However, as Mastrofski and colleagues (1996) note, “citizens who acquiesce at the scene can renege” (p. 283). In other words, if citizens fail to internalize legal restrictions, further police intervention will eventually be required. An important contribution of psychological jurisprudence, therefore, is to shed light on the question of how to best motivate public rule-following behavior, both in general and with respect to specific encounters with authorities (Darley, Tyler, & Bilz, 2003; Tyler, 2006b). The legal system depends on obedience, and the law and police officers and judges generally expect public deference. The power of the legal system to gain cooperation is substantially increased when strategies for obtaining deference

are based on an accurate and relatively complete model of human motivation.

PERSPECTIVES ON SOCIAL CONTROL

An underlying assumption of the legal system is that public deference is a desirable attribute. This view fits well with a "consensus" view of society (Dahl, 1956, Easton, 1965; Lipset, 1959; Parsons, 1967; Sears, 2003; Tyler, 2006a). From this perspective, all members of society benefit from stability and social order of the type produced by an effectively administered rule of law. Hence, it is beneficial when people obey the law, and facilitating such an outcome through legal authorities and institutions is an important goal.

In contrast to this perspective, "conflict"-based views of society, such as those associated with Marxism, realistic group conflict theory, social identity theory, and social dominance theory, look at society as composed of competing groups. Group distinctions may correspond to economic classes (e.g., rich vs. poor), or they could be based on ethnic or national group memberships (White vs. minority; native born vs. immigrant). However a given society is constituted, those groups that dominate through their control of cultural and economic institutions tend to establish rules that are designed to benefit their own group and recruit authorities (e.g., police) to enforce those rules. From this perspective, the rules are created and administered to benefit particular groups and will be only marginally likely to produce justice for the members of disenfranchised groups (in the best case scenario). In legal scholarship, the conflict view is reflected in the writing of Edelman and Scheingold, among others. To the degree that such a view of society is adopted, it is not unambiguously good to maintain social order. In fact, it would be better if people were to become more sensitive to injustice in the system and more resistant to the status quo; they would then be more mobilized to create social change.

The ways in which these perspectives diverge can be demonstrated by considering one legal procedure in particular—dispute mediation. It is often difficult within the legal system to produce dispute resolution decisions that are mutually acceptable to the parties who come to court. Mediation has become popular among legal authorities because it is found to produce more acceptable decisions, as reflected in both expressions of satisfaction on the part of disputants and long-term adherence to those agreements. Hence, the use of mediation is viewed by consensus theorists as a desirable way to manage everyday disputes involving landlords and tenants, merchants and customers, and many other parties.

However, from a community-organizing perspective that is sensitive to the presence of conflict in society, mediation is not so favorably evaluated. Mediation provides a mechanism by which the most highly motivated complainants can receive some measure of justice and satisfaction for their disputes. At the same time, it "cools out" those individuals who are most likely to be socially aware and committed members of the community. Once their

individual level grievance has been settled, they have less motivation to join with others to work at a collective level to rectify injustices. So, for example, a merchant may engage in unfair pricing practices but resolve grievances individually only with those who are most angered by their actions. This saps energy from politically motivated collective action aimed at establishing regulations that would constrain the merchant to act more ethically. While we recognize that the consensus and conflict perspectives provide very different normative perspectives on issues of compliance and settlement, our focus is on the effectiveness of different approaches for motivating compliance, setting aside the ultimate desirability of being able to obtain widespread compliance.

THE DETERRENCE MODEL

In recent decades the exercise of legal authority has become increasingly associated with the use of threat and punishment aimed at deterring people from engaging in criminal behavior (e.g., Kahan, 1999; Nagin, 1998). From this perspective, the focus is (and should be) on the power of legal authorities and institutions to shape behavior by threatening to deliver (or by actually delivering) negative sanctions for rule breaking. Within legal circles, this way of viewing the relationship between legal authorities and citizens is referred to as the deterrence or social control model, and it is this model of human behavior that—for better or worse—currently dominates law and public policy.

Motivational Assumptions of the Deterrence Model

To implement deterrence strategies police officers carry guns and clubs, and they are empowered to threaten citizens with physical injury and incapacitation, among other penalties. The goal is to establish legal authority and, as Reiss (1971) points out, "The uniform, badge, truncheon, and arms all may play a role in asserting authority" in the effort to "gain control of the situation" (p. 46). The police thereby seek to gain control over the individual's behavior "by manipulating an individual's calculus regarding whether 'crime pays' in any particular instance" (Meares, 2000, p. 396). More generally, agents of the legal system who are charged with producing compliant behavior concern themselves with shaping environmental contingencies in such a way that citizens will be faced with the prospect of heavy losses (e.g., incarceration) that are intended to outweigh the anticipated gains of engaging in criminal behavior. Judges, for example, attempt to influence people's acceptance of their decisions by threatening fines or jail time for failure to comply. The deterrence model dictates that the responsibility of lawmakers is to decide which acts should be prevented and then to specify sufficiently strict penalties—generally fines or prison terms—so that the prohibited behavior is rarely enacted.

The notion that people's behavior with respect to the law is shaped by calculations of expected gains and losses is a core premise of rational choice theory, as derived

from neoclassical economics (Blumstein, Cohen, & Nagin, 1978; Nagin, 1998). It is assumed that most people will calculate expected utilities by multiplying the probability of an outcome (e.g., getting caught for armed robbery or drunk driving) by its valence (very, very bad). If the laws are well calibrated, people will arrive at the desired conclusion that they should follow the law. Thus, rational self-interest is the motivational engine of the deterrence/social control model. To regulate behavior, this model suggests that decision makers should adjust criminal sanctions to the needed level so that the expected losses associated with lawbreaking will minimize the likelihood that people will break the law.

Research supports the notion that variations in the perceived certainty and severity of punishment do affect people's compliance with the law, at least to some degree. In particular, people's behavior is often, though not always, shaped by their estimate of the likelihood that if they disobey the law, they will be caught and punished (see Nagin & Paternoster, 1991; Paternoster, 1987, 1989; Paternoster & Iovanni, 1986; Paternoster, Saltzman, Waldo, & Chiricos, 1983). At the same time, however, perceptions of the likelihood of being caught and punished seem to have a relatively minor influence on people's behavior, as we will see (MacCoun, 1993; Robinson & Darley, 1995, 1997; Ross, 1982). Consequently, social control strategies based exclusively on a deterrence model of human behavior have had at best limited success (see also Tyler, 1997a, 1997b, 1997c, 1998).

Problems with the Deterrence Model

The deterrence model, with all of its motivational assumptions, has had dramatic effects on the nature of American society. Consider the case of the U.S. prison population (Haney & Zimbardo, 1998). Because of the widespread belief that crime is deterred by the threat of punishment and/or the experience of punishment, a massive number of citizens have been convicted and sentenced to serve time in prison. Today, the United States is a world leader in the proportion of citizens it holds in prison. In the year 2000 there were over 2 million Americans in jail or prison, a large percentage of the adult population (U.S. Department of Justice, 2001), far surpassing incarceration rates in Europe and elsewhere (Garland, 2001). Given the heavy costs of imprisonment to individuals and communities (especially members of racial and ethnic minority groups, which are overrepresented in the prison system), it is crucial to ask whether the deterrence model is based on sound psychological principles.

Costs of Surveillance

Assuming unlimited resources on the part of law enforcement officials, there is probably nothing inherently untenable (from a purely pragmatic point of view) about controlling people's behavior through threats of punishment. One of the key problems with sanctioning systems, however, is that they require near-constant surveillance of individual behavior. For obvious reasons, people are strongly motivated to hide their behavior from authori-

ties to avoid punishment; authorities must therefore develop surveillance systems for detecting rule-breaking behavior. Sometimes surveillance is easy, because the structure of the situation makes it easy. For example, wage earners' incomes are easy for the government to monitor, because businesses withhold percentages from each paycheck and send the withheld amount to the government. This makes tax violations among this group relatively easy to prosecute. In other cases, however, surveillance can be quite difficult. The police, for example, have tremendous difficulty monitoring public behavior in order to identify people who are using illegal drugs, just as tax authorities have trouble monitoring the incomes of street vendors, waiters and waitresses, and small business owners.

For all these reasons, as Meares (2000) notes, the effectiveness of "instrumental means of producing compliance always depend[s] on resource limits" (p. 401). The relevant questions are how much in terms of financial and other resources are authorities willing to expend in order to control crime, and how much power to intrude into citizens' lives are people willing to allow the authorities to have?

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

The deterrence model probably works best in the case of crimes that are committed for instrumental reasons. For example, car theft, burglary, and crimes of this type are at least to some extent motivated by calculations about the costs and benefits expected from lawbreaking behavior. Thus, deterrence approaches work best in affecting the occurrence of instrumentally motivated crimes. They are significantly less effective in controlling criminal behavior that is motivated by factors other than economic gain.

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

blocks and other similarly expensive and intrusive law enforcement measures are insufficient to create and maintain subjective risk estimates that are high enough to deter drunk driving over the long term.

As we have noted, many of the problems associated with deterrence-based strategies identified by Ross (1982) and others are structural in nature and involve variations in the degree to which the police are able to monitor citizens' behavior. This suggests that there should be situations in which deterrence strategies will be more or less effective in deterring lawbreaking behavior. From a deterrence approach, the two key variables determining the extent to which such strategies will be effective are (1) the ease of behavioral surveillance and (2) the level of resources that society is willing to devote to the task of surveillance.

Insensitivity to the Magnitude of Punishment

Deterrence works reasonably well in at least some cases of murder, mainly because society has devoted considerable resources to preventing murder and enforcing penalties for it. The objective risk of being caught and punished for murder is relatively high: approximately 45% (Robinson & Darley, 1997). The likelihood of being caught for committing a murder is high enough for deterrence to be effective in lowering the murder rate. Even in this case, however, criminals are not as sensitive to the magnitude of the penalty as they are to the estimated probability of being apprehended. As a result, capital punishment does not serve to deter murder more effectively than does life imprisonment (Ellsworth & Mauro, 1998).

Studies consistently find that the most important issue to people who are deciding whether or not to break the law is their estimate of the likelihood of being punished for their actions and not the expected severity of their punishment (e.g., Nagin & Paternoster, 1991). Consequently, societies cannot enforce rules simply by developing more and more draconian punishments. To be effective, authorities must engage in extensive surveillance strategies that increase the likelihood of detection. In other words, they must increase the number of supervisors who are watching employees or increase the size of the police force that is watching citizens. Effective strategies are, therefore, inevitably costly. There are no deterrence-based quick fixes that can be gained cheaply—despite the frequent suggestion among policymakers that a few instances of dramatically severe punishment will depress crime.

With regard to less serious crimes, the deterrence model is even less effective. Despite the expenditure of significant societal resources in the form of increased police efforts in the "War on Drugs," deterrence strategies have failed to improve rates of public compliance with drug laws. MacCoun (1993) estimates that only about 5% of the variance in people's use of illegal drugs is attributable to their perceptions of the likelihood of being caught and punished for rule breaking. For most people, and especially for addicts, the decision to obtain or con-

sume controlled substances is simply not based on a rational calculation of prospective legal costs.

Subjectivity and Bias in Risk Estimates

There are many other crimes that are motivated not by instrumental concerns but by temporary emotional states—what Loewenstein, Prelec, and Shatto (1998) refer to as a "hot state." For example, crimes such as rape, assault, and many murders occur on the "spur of the moment" and in the "heat of passion." In such cases, the assumption that rational calculations of costs and benefits enter into the perpetrator's "decision" about whether or not to commit such crimes is naive in the extreme. In part, this is because of intrapersonal "empathy gaps": The person who is in a "hot state" cannot access or identify with how he or she will think or feel later upon returning to a "cold state" (Loewenstein et al., 1998). Thus, crimes of passion as well as crimes committed under states of intoxication are relatively unaffected by deterrence strategies, regardless of the actual or even perceived likelihood of being caught and punished for wrongdoing.

The lack of a direct correspondence between objective and subjective risks leads to another problem with the psychology of the deterrence model, namely, its failure to take into account "threshold effects." That is, to influence people's behavior at all, risk estimates need to be high enough to exceed some threshold of being psychologically meaningful (Ross, 1982; Teevan, 1975). In most situations the objective risk of being caught and punished is quite low. For example, the approximate objective risk of being caught, convicted, and imprisoned for rape is 12%; for robbery it is 4%; and for assault, burglary, larceny, and motor vehicle theft the incarceration rate is approximately 1% (Robinson & Darley, 1997). Of course, psychologists know that subjective estimates of risk are stronger determinants of people's behavior than are objective risks. However, research suggests that subjective risk estimates for infrequent events are, if anything, even lower than objective risks (e.g., Bazerman, 1990). Furthermore, it is reasonable to assume that people's estimates of whether or not they will be apprehended by the police are subject to egocentric biases and the "illusion of invulnerability" (Dunning, 1999; Taylor & Brown, 1988).

Limits of Extrinsic Motivation

There are still other reasons to think that the deterrence model is based on flawed motivational assumptions. For most crimes, the resources devoted to law enforcement are low and the opportunities for cheating are high. This is as true of white-collar crime and corporate wrongdoing as it is of other crimes (e.g., Moore & Loewenstein, 2004). In many cases, imposing monetary penalties can paradoxically *decrease* rather than increase rates of compliance, because of the fact that people construe the fine as a price and determine that they are willing to pay the cost in order to benefit from rule-breaking behavior (Gneezy & Rustichini, 2000; Tenbrunsel & Messick, 1999).

An analysis in terms of general principles of human motivation further suggests that if people comply with the law only in response to coercive power, they will be less likely to obey the law in the future because acting in response to external pressures diminishes internal motivations to engage in a behavior (e.g., Brehm, 1966; French & Raven, 1959; Tyler & Blader, 2000). This follows from the well-known distinction in social psychology between intrinsic and extrinsic motivation. Research on intrinsic motivation shows that when people are motivated solely by the prospect of obtaining external rewards and punishments they become less likely to perform the desired behavior in the absence of such environmental reinforcements (e.g., Deci, 1975). On the other hand, if people are motivated by intrinsic reasons for behaving in a certain way, their compliance becomes much more reliable and less context dependent.

Studies of regulatory authorities indeed demonstrate that seeking to regulate behavior through the use of threat serves to undermine people's commitment to rules and authorities, compared to other methods of regulation (Frey, 1994; Frey & Oberholzer-Gee, 1997). From a motivational perspective, instrumental approaches are not self-sustaining and require the maintenance of institutions and authorities that can keep the probability of detection for wrongdoing at a sufficiently high level to constantly motivate the public through external means (i.e., the threat of punishment). Over time it becomes more and more important to have external constraints in place, for whatever intrinsic motivation people originally had is gradually "crowded out" by extrinsic concerns.

Distrust and Suspicion

The use of surveillance systems also has deleterious effects on the social climate of groups. The use of surveillance implies distrust, which decreases people's ability to feel positively about themselves, their groups, and the system itself (e.g., Kramer & Jost, 2002; Kramer & Tyler, 1996). Furthermore, people may experience intrusions into their lives as procedurally unfair, leading to anger and other negative emotions often associated with perceptions of injustice (e.g., Gurr, 1970; Tyler & Smith, 1998). Whether surveillance works or not, it is often demotivating and introduces new costs in terms of distrust and perhaps even paranoia in subsequent social interaction. Such costs are borne by groups, organizations, and societies to which people belong, as they lose the gains that occur when people are willing to cooperate with each other. Research suggests that the increasing use of deterrence strategies and social control has exerted precisely this type of negative influence on the U.S. social climate. It has created an adversarial relationship between legal authorities and members of the communities they serve, especially with respect to racial and ethnic minority group members (Tyler & Huo, 2002), leading the public to grow less compliant with the law and less willing to help the police to fight crime (Sunshine & Tyler, 2003b).

Achieving a better understanding of the psychology of human motivation should be of paramount interest to le-

gal authorities, to members of the legal profession, and to those working within legal institutions such as the courts, the police, and prisons. The problems inherent in implementing many laws—and the inadequacy of the deterrence model in general—have led to widespread calls from legal authorities and scholars for social science to help in understanding how to secure the effective rule of law. Their concerns suggest that current models of the determinants of human behavior are not providing legal authorities with an adequate basis for effective social regulation. This presents an important opportunity for psychologists to put forward a new and more empirically grounded perspective on the relationship between the individual and society and the following of social rules. Taking psychological jurisprudence seriously means linking our understanding of motivation and social influence in legal contexts to a broader psychological understanding of the person (e.g., see Cohn & White, 1990; Krislov, Boyum, Clark, Shaefer, & White, 1966; Melton, 1985; Tapp & Levine, 1977).

AN ALTERNATIVE MODEL BASED ON SOCIAL PSYCHOLOGICAL PRINCIPLES

Most legal scholarship, as we have seen, addresses issues of motivation and rule following in the context of deterrence and social control (i.e., by imposing external constraints on people largely through the threat of punishment). Social psychologists can contribute to a more sophisticated understanding of compliance. Specifically, a good deal of research indicates that self-regulatory motivations are activated when people believe that the law reflects their views about right and wrong and that it is therefore a moral responsibility and even an obligation to conform to the law. Consequently, people who identify with legal authorities and imbue the legal system with legitimacy will voluntarily abide by laws and defer to authorities (Darley et al., 2003; Jost & Major, 2001; Tyler, 2006a; Tyler & Blader, 2000). We develop this position in more detail in the remainder of this chapter.

Commitment Based on Legitimacy and Moral Values

Ever since Kurt Lewin's (1936) field theory, social psychologists have assumed that behavior is determined by two main forces. The first is the pressure of the situation or the environment, and the second includes the motives and perceptions that the person brings to the situation. In Lewin's famous equation, behavior is understood to be a function of the person and the environment: $B = f(P, E)$. An expanded conception of the person term includes the set of social and moral values that shape the individual's thoughts and feelings about what is ethical or normatively appropriate to do. We focus on two such values: (1) the conviction that following the rules of the community is (in most cases) the morally appropriate thing to do, and (2) commitment to the notion that if the rules are fair and legitimate, they ought to be obeyed.

From a social psychological perspective, the first step is to recognize that the legal system depends at least in part

on the willingness of citizens to consent to the operation of legal authorities and to actively cooperate with them. Second, willing acceptance comes most quickly and completely to the extent that people view the law as (1) determined and implemented through procedurally fair means, and (2) consistent with cherished moral values.

These notions are consistent with the proposals of Ayres and Braithwaite (1992), who suggest that legal authorities should approach citizens by appealing to their moral values. The idea is that if authorities are successful in joining legal and moral concerns, it will be much easier to isolate the relatively small number of citizens who do not share the values of the community. Third, if the overwhelming majority accepts that the law is based on sound moral principles carried out by legitimate authorities, the majority is likely to exert strong social pressure on deviants to conform to normative standards. This is a kind of social self-regulation that enhances the effectiveness of legal authorities by freeing them to pay attention to those problems or people who, for various reasons, are not amenable to self-regulation (Ayres & Braithwaite, 1992).

The Concept of Legitimacy

Modern discussions of legitimacy are usually traced to the writings of Weber (1968) on authority and the social dynamics of authority (e.g., Zelditch, 2001). Weber, like Machiavelli and others before him, argued that successful leaders and institutions use more than brute force to execute their will. More specifically, they strive to win the consent of the governed so that their commands will be voluntarily obeyed (Tyler, 2006a). As Kelman (1969) put it: "It is essential to the effective functioning of the nation-state that the basic tenets of its ideology be widely accepted within the population. . . . This means that the average citizen is prepared to meet the expectations of the citizen role and to comply with the demands that the state makes upon him, even when this requires considerable personal sacrifice" (p. 278). Widespread voluntary cooperation with the state and the social system allows authorities to concentrate their resources most effectively on pursuing the long-term goals of society. The authorities do not need to provide incentives or sanctions to all citizens to get them to support every rule or policy they enact.

Legitimacy, according to this general view, is a quality that is possessed by an authority, a law, or an institution that leads others to feel obligated to accept its directives. It is, in other words, "a quality attributed to a regime by a population" (Merelman, 1966, p. 548). When people ascribe legitimacy to the system that governs them, they become willing subjects whose behavior is strongly influenced by official (and unofficial) doctrine. They also internalize a set of moral values that is consonant with the aims of the system, and—for better or for worse—they take on the ideological task of justifying the system and its particulars (see also Jost & Major, 2001).

Although the concept of legitimacy has not featured prominently in recent discussions of social regulation with respect to law-abiding behavior, there is a strong intellectual tradition that emphasizes the significance of

developing and maintaining positive social values toward cultural, political, and legal authorities (Easton, 1965, 1975; Krislov et al., 1966; Melton, 1985; Parsons, 1967; Tapp & Levine, 1977). This work builds on the sociological tradition associated with Weber and others. According to "consensus" theories such as these, the smooth functioning of society depends on the existence of supportive attitudes and values among members of the population in general. Presumably, attitudes and values that support the social system begin to develop during childhood and adolescence as part of the process of political (and legal) socialization (e.g., Cohn & White, 1990; Niemi, 1973).

The value of cultivating system legitimacy consists in its enabling the effective (and, ideally, fair) exercise of social authority. While authorities can exercise power directly through the promise of rewards or the threat of punishment, such approaches to deterrence are expensive, inefficient, and psychologically naive. They may be especially problematic during times of instability or crisis, when authorities need the support of the people at a time in which they lack control over resources. An organization or society whose governance is motivated only by incentives and sanctions is at risk of disintegrating during times of trouble or change. In contrast, if a system enjoys widespread legitimacy, authorities can appeal to members based on their shared purposes and values, providing the system with much-needed stability. From this perspective, legitimacy is a highly desirable feature of social systems (see also Tyler, 2006b; Tyler & Huo, 2002).

Underlying this generally positive view of the role of legitimacy and social values in motivating cooperation with the social system is the tenet of consensus theories that there is a mutual benefit that comes from voluntarily accepting societal norms. According to this view, the rulers and the ruled alike gain from having "a stable social and political order" that is helped by widespread shared beliefs that the system is legitimate and consistent with people's moral values (Sears, 2003, p. 322). Clearly, legitimacy and stability facilitate regulation—the process whereby authorities seek to bring the behavior of individuals into line with system rules. The police and courts depend very heavily on the widespread voluntary compliance of most of the citizens most of the time (Tyler, 2006b). This compliance presumably allows authorities to focus their attention on those individuals and groups whose behavior seems to be responsive only to threats of punishment. The legal system would be overwhelmed immediately if it were required to regulate the behavior of the majority citizens solely through sanctioning or the threat of sanctioning.

Legitimacy, as we have suggested, has many appealing features as a possible basis for the rule of law. On its face it appears to be an all-purpose mechanism of social coordination, insofar as people feel obligated to obey whatever laws or decisions authorities make, within some realm of legitimacy. Much as studies of confidence and trust in government focus on people's overall evaluations of the government, its institutions, and its authorities (Citrin & Muste, 1999), studies of "legal consciousness" focus on whether people have "trust and confidence" in

the legal system, whether they think that the law works to help everyone, and how and when people have duties and obligations to legal institutions and authorities (Ewick & Silbey, 1988; Finkel, 1995; Flanagan & Longmire, 1996; Hamilton & Sanders, 1992; Merry, 1990).

Research by Tyler (2006b) demonstrates that perceptions of system legitimacy do shape everyday compliance with the law, which is a conclusion that is also supported by other studies (Sunshine & Tyler, 2003b; Tyler & Huo, 2002). Furthermore, perceived legitimacy seems to have more influence on compliance than do subjective assessments of the likely risk of punishment. When people perceive the system as legitimate, they feel an intrinsic moral obligation to comply with its demands.

Internalization of Moral Values

Moral values are influential because they are based on internalized feelings of responsibility to follow certain principles (see Robinson & Darley, 1995; Tyler & Darley, 2000). A key feature of moral values is that people feel personally obligated to adhere to them, and they feel guilty when they fail to do so. Hence, moral values—once they exist—are self-regulatory in nature; people who possess them are strongly motivated to bring their conduct into line with normative standards. The internalized sense of morality is central to the work of, among others, Freud, Weber, and Durkheim (e.g., see Sunshine & Tyler, 2003a). Hoffman (1977) writes:

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

The idea is that internalized values become self-regulating, so that people accept and act on the basis of values that produce respect for societal institutions, authorities, and rules. Public standards are taken on as private values that are associated with a moral responsibility to act in accordance with ethical judgments about what is right and wrong. Presumably, this occurs during childhood as part of the socialization process (Cohn & White, 1990; Greenstein, 1965; Hess & Torney, 1967; Hyman, 1959; Merelman, 1966; Niemi, 1973). Robinson and Darley (1995) conclude that people's moral values form during childhood socialization and are not easy to change later in their lives.

The significance of morality is illustrated by research on punishment. Studies demonstrate that people's views about appropriate sentencing decisions in criminal cases are driven by moral judgments about deservingness rather than by instrumental judgments concerning how to deter future criminal conduct (Carlsmith, Darley, & Robinson, 2002; Darley, Carlsmith, & 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 & Darley, 1995; Tyler, 2006b). 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.

Justice as Intrinsically Motivating

Our value-based model of motivation to obey the law is also consistent with two additional principles of human behavior that should be made more explicit. One is that people, as a general rule, desire justice; that is, they are motivated by fairness concerns. In summarizing decades of research, Lerner (2003) refers to this as the "justice motive," and he suggests that it cannot be reduced to considerations of self-interest. There is indeed evidence that people experience unfair advantages (as well as disadvantages) to be psychologically aversive and that they are happier when justice is served (e.g., Boll, Ferring, & Filipp, 2005; Loewenstein, Thompson, & Bazerman, 1989; Walster, Walster, & Berscheid, 1978). This work provides a reasonably strong basis for assuming that people *want* to follow the law and that they want others to follow the law—*provided that they also believe that the law is fair and just*. To draw on the justice motive as a source of legal obedience, therefore, authorities must pursue policies that are generally consistent with people's sense of right and wrong (Sunshine & Tyler, 2003a).

A second and related fact about human behavior, to which we have alluded already, is that people are more consistently motivated by intrinsic than extrinsic considerations (e.g., Deci, 1975; Frey & Oberholzer-Gee, 1997). Thus, to the extent that social values become internalized, they become a part of the person and lead him or her to exercise self-regulation so that their behavior is consistent with the principles and values that define their sense of themselves. Under such circumstances, people may be expected to follow the rule of law not out of a temporary fear of surveillance but because they have internalized the values that are codified by the legal system. Deference, then, will not be experienced as a cost but as the kind of benefit that comes from doing what is defined as morally right.

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 required. For this model to work, society must create and maintain public values that are conducive to following justice norms. Political scientists refer to this set of values as a "reservoir of support" for government and society (Dahl, 1956). Although it may not always be easy for authorities to maintain high reservoir levels, a value-based model is consistent with a social psychological understanding of how authorities can ef-

fectively regulate citizen behavior, maintain social order, and promote an effective, well-functioning society by developing and maintaining a culture of supportive social values that will be internalized by the citizenry.

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

SYSTEM JUSTIFICATION AND THE PROBLEM OF FALSE CONSCIOUSNESS

Up to this point, we have assumed that fostering perceptions of system legitimacy is uniformly desirable, especially from the standpoint of legal authorities. Astute readers will have realized, however, that the power of legitimacy to motivate compliance can be abused. That is, Machiavellian leaders can use their influence to lend legitimacy to immoral as well as moral causes and to maintain consensual support for oppressive as well as beneficent forms of social control (e.g., Jost & Major, 2001). And, as we have noted, conflict models of society suggest that elite individuals and groups are highly motivated to wield their power and the legitimacy they possess in order to achieve ends that suit their own interests. The social psychological processes that we describe, therefore, are morally ambiguous. We return later to the question of whether it is possible to reconcile descriptive accounts of how and why people actually perceive systems and authorities as legitimate and normative accounts of whether people *ought* to perceive them as legitimate and therefore worthy of compliance.

Legitimacy, Authorization, and Obedience to Authority

Legitimacy, we have suggested, is the property of a rule or authority that leads people to feel morally obligated to voluntarily defer to that rule or authority. From a social influence perspective, a legitimate authority is a person or group that is regarded by others as being entitled to have its rules accepted and followed (e.g., French & Raven, 1959). In this way, ascriptions of legitimacy play a key role in persuasion and motivation, especially to the extent that legitimate authority figures can lead people to suspend considerations of self-interest and to ignore personal goals and values that are at odds with officially

sanctioned values. This capacity for systems and authorities that are perceived as legitimate to influence and motivate others is a double-edged sword. It means that people will be loyal and committed to following the norms and rules of the system, but it also means that they can be made to obey unjust laws and pursue cruel objectives in the name of the system.

In their study of obedience to authority, Kelman and Hamilton (1989) use the term “authorization” to capture the process by which followers license their leaders to define what counts as appropriate behavior in a given situation. In this way, citizens, employees, soldiers, and others abdicate moral responsibility and follow orders conscientiously. Kelman and Hamilton note “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” (p. 16).

Imbuing institutions and authorities with legitimacy has the consequence of “authorizing” certain behavior that might not otherwise be seen as normatively appropriate. In fact, people often view their own moral values as irrelevant when a legitimate authority figure is present. An example is provided by Milgram’s (1974) famous experimental studies of obedience to authorities. As Kelman and Hamilton (1989) note:

It is interesting that, in the postexperimental debriefing, he [a participant who shocked the confederate at the maximum level] seems unable to understand a question about whether there are any conditions under which he might have stopped administering shocks to [the confederate]. As far as he is concerned, he did stop—and he seems dismayed to learn that some participants did not stop. He stopped; it was the [authority] who continued. His hand may have been on the switch, but the decision and the responsibility were clearly the experimenter’s. (p. 155)

Thus, under some (perhaps exceptional) circumstances, granting legitimacy to authorities and internalizing the moral values that are encouraged by any given system can lead good people to engage in horrific activities (see also Darley, 2004). The problem of obedience to a legitimized authority figure, however, is only one of several related problems that can result from idealizing the system and its authorities.

False Consciousness and the Legal System

As we have noted, consensus theorists influenced by Weber and his intellectual heirs assume that virtually everyone benefits from a stable and effective social system. This assumption is not shared by conflict theorists inspired by Marx and his followers (see Zelditch, 2001). Rather, a Marxian perspective suggests that members of elite or dominant groups have an ideological interest in maintaining the existing social system, whereas the objective interests of subordinated groups lie in opposing the status quo (e.g., Parkin, 1971). However, due to socialization pressures, members of subordinated groups often

develop ideological beliefs that are supportive of the system rather than of their own needs and interests.

The dominant class, in other words, uses its control over cultural institutions—including churches, schools, and the mass media—to promulgate an image of society that obscures the oppression of the subordinate class and legitimates the status quo by portraying existing institutions as fair, appropriate, and just. From a Marxian perspective, then, internalized social values may reflect distortions of the true social situation. They may reflect, in other words, “false consciousness” (e.g., Jost, 1995; Tyler & McGraw, 1986). Members of disadvantaged groups, according to this view, are often made worse off by acquiescing to dominant ideologies and accepting existing authorities and institutions as legitimate.

It has been argued that citizens’ relatively widespread acceptance of the legitimacy of legal authorities and institutions reflects some degree of false consciousness (e.g., Fox, 1999). Scheingold (1974), for instance, proposed that at a system level of analysis, the function of the courts is to provide disadvantaged people with symbolic satisfaction rather than to make rulings that create substantive justice. And in an article that was subtitled “Let Them Eat Due Process,” Haney (1991) further suggested that many litigants are manipulated into believing that they are receiving procedural justice from the court system when in fact they are being hoodwinked into accepting poor outcomes.

An even stronger indictment of the legal system comes from the work of Sidanius and Pratto (1999), who argue that the law is in fact an instrument of oppression that is wielded by elite members of society against those who are disadvantaged, especially members of racial and ethnic minority groups. From these perspectives, legal institutions do not deserve the degree of legitimacy that they currently enjoy.

System justification theory, which builds on Marxian analyses of ideology and false consciousness and Lerner’s (1980) work on the belief in a just world, among other influences, focuses on the social psychological tendency to rationalize the status quo and to see “what is” as “what ought to be” (Jost & Banaji, 1994). The theory suggests that people are apt to exaggerate the legitimacy of existing institutions, in part because they have little choice but to live with and adapt to them (Jost & Hunyady, 2002). Because it is psychologically aversive to feel as if one is subject to unjust treatment, capricious authorities, and oppressive institutions, people tend to believe that the status quo is fair and just. Thus, they develop stereotypes and ideologies—some of which may be operating at a nonconscious level of awareness—that bolster existing institutions and narrow the range of conceivable and acceptable alternatives to the status quo (e.g., see Jost, Banaji, & Nosek, 2004).

System justification—defined as the tendency to justify the status quo—is often observed in the economic realm. People tend to uncritically accept meritocratic explanations for inequality (Jost, Pelham, Sheldon, & Sullivan, 2003; Tyler & McGraw, 1986) and to blame individuals rather than systems for the existence of poverty (Hochschild, 1981; Kluegel & Smith, 1986). Further-

more, research by Jost, Blount, Pfeffer, and Hunyady (2003) suggests that people who live under capitalist systems are motivated to believe in “fair market ideology,” according to which market-based outcomes and exchanges are not only efficient but also inherently fair and legitimate. Consistent with this general theoretical perspective, Tyler (2004) showed that people who endorsed free-market procedures as fair were more likely to resist governmental intervention in the economic sphere and less likely to support social change aimed at increasing economic justice.

Why would people engage in system justification, especially when it is contrary to their own individual and collective interests? Jost and Hunyady (2002) proposed that system-justifying ideologies serve a palliative function in that they decrease anxiety, uncertainty, guilt, frustration, and dissonance and increase people’s satisfaction with their own situations and with the status quo in general. Research by Wakslak, Jost, Tyler, and Chen (in press) provides support for these affective benefits of system justification. Specifically, they demonstrated that increased system justification—either measured in terms of strength of ideological endorsement or experimentally manipulated by activating a “Horatio Alger” rags-to-riches mindset—produces a significant reduction in emotional distress, which in turn leads to a significant reduction in support for social change and the redistribution of resources.

Although system justification theory has only recently been applied to the law (Blasi & Jost, 2006; Greenwald & Krieger, 2006; Hanson & Yosifon, 2004; Kang, 2005; Travis, 2005; see also Jolls & Sunstein, 2006), there are numerous consequences of the theory for the legal system and its legitimacy. For one thing, the fact that people come to believe that the system is fair and legitimate does not in any way mean that it actually is. Researchers have shown that there are a number of cognitive and motivational biases that lead people to rationalize outcomes and procedures that are neither favorable nor inherently just (see Jost et al., 2004, for a review). This work integrates and builds on earlier evidence that people evince a remarkable capacity to acquiesce in the face of injustice (e.g., Crosby, 1982; Major, 1994; Moore, 1978; Tyler & McGraw, 1986). Thus, system justification theory suggests that, for a wide range of psychological reasons, false consciousness about legal and other institutions may be relatively widespread (see also Jost, 1995; Jost & Banaji, 1994).

Is there a way out of this predicament? How can citizens and their leaders increase the likelihood that system legitimacy is genuine rather than illusory? There may be no way of guaranteeing that legal institutions will deliver substantive justice, but it seems to us that adhering to normatively defensible standards of procedural fairness maximizes the likelihood of obtaining outcomes that are objectively (and not just subjectively) fair (see also Jost & Ross, 1999). In other words, efforts to attain system legitimacy should be based not merely on bringing about consensus *per se* but on establishing and protecting standards that are likely to guarantee genuine or substantive fairness.

NATURALIZING JUSTICE: RECONCILING NORMATIVE AND DESCRIPTIVE ACCOUNTS OF LEGITIMACY

The social psychological principles we have described throughout this chapter are morally ambiguous. That is, they can be used equally to win compliance for just and unjust systems and authorities. However, for our model to contribute to genuine (rather than merely apparent) system legitimacy, there must be congruence between subjective and objective justice considerations. That is, the system that seems morally justified must in fact *be* morally justified, according to normative theories of justice as developed, for example, in the philosophical traditions of Kant, Mill, Marx, Rawls, and others. The issue we are raising here is how normative and descriptive accounts of social justice and system legitimacy can be reconciled.

To some readers, it may seem like an impossible task to distinguish between “true” and “false” consciousness or, relatedly, between social systems that provide genuine, substantive justice rather than merely the subjective appearance of justice. We readily acknowledge that this is a challenging problem that may require the active collaboration of philosophers, legal scholars, sociologists, psychologists, and others in order to solve it. At the same time, the problem is similar to the one facing students of *rationality*. By juxtaposing descriptive psychological data concerning the ways in which people actually make decisions under ambiguity and uncertainty with normative accounts of rationality derived from philosophical and economic theories, scholarship on judgment and decision making has advanced considerably (e.g., Kahneman, Slovic, & Tversky, 1982; Thaler, 1994). Just as we can ask whether a person is acting rationally, we can ask whether a system is just. In either case, the key issue is to create a normative model against which psychological findings can be compared.

Within legal research, the attempt to reconcile normative and descriptive approaches has spawned the influential and productive “behavioral law and economics” movement (e.g., Sunstein, 2000). In general, such efforts to “naturalize” the study of traditionally philosophical questions by bringing scientific evidence to bear on them have been quite successful.

A similar opportunity exists for behavioral realists who are interested in reforming legal code to make it more just in light of social psychological principles involving stereotyping, bias, and discrimination (e.g., Blasi & Jost, 2006; Kang & Banaji, 2006; Krieger & Fiske, 2006). For example, current discrimination law falls short of protecting members of disadvantaged groups against automatic, unintentional biases that likely harm their chances in a variety of employment and educational contexts. The question is how the law can and should be changed to prevent disparate treatment of minorities and women in light of scientific evidence demonstrating that implicit stereotyping and prejudice can produce discriminatory effects (e.g., Ayres, 2001; Fazio & Olson, 2003; Greenwald & Krieger, 2006; Kang, 2005; Krieger, 1995).

On an even grander scale, it may be possible to bring descriptive sociological and psychological research to bear on normative questions of what constitutes a truly just social system. Probably the most progress has occurred with respect to empirical assessments of John Rawls’s (1971) theory of justice as fairness. In the Kantian philosophical tradition, Rawls argued that the most just social system would be the one chosen by rational decision makers under a “veil of ignorance,” that is, without knowing anything about their own status or position within the resulting social system. Drawing at least in part on psychological theory and research, Rawls reasoned that under such circumstances people would choose a social system that (1) minimized the degree of inequality in social and economic outcomes, and (2) maximized the social and economic outcomes of those who would occupy the worst position in the new system.

Although there is a limited sense in which empirical research can be said to approximate what Rawls’s hypothetical rational decision makers would choose under the “veil of ignorance” as he described it, studies have shown that actual decision makers do tend to favor at least some of the justice principles Rawls advocated (e.g., Bond & Park, 1991; Fröhlich & Oppenheimer, 1992; Jost & Ross, 1999; Mitchell, Tetlock, Mellers, & Ordóñez, 1993). That is, in evaluating the fairness of various distributional schemes, people who lack information that would enable them to act on self-interest motives tend to behave in a manner that is at least somewhat related to how Rawls theorized they *should* behave. We suggest that similarly useful points of contact exist between normative (i.e., legal and philosophical) and descriptive (sociological and psychological) approaches to issues of *procedural* fairness. The important point is that it is—at least in principle—possible to investigate whether certain normative conceptions of justice and morality fit with empirical data in psychology and other social and behavioral sciences (see also Doris, 2002; Flanagan, 1991; Harman, 1999).

Procedural Fairness as the Basis of Legitimacy

For system legitimacy to be genuine, effective, and long lasting, it needs to be based on more than consensus alone. Aristotle linked the stability of the state to the voluntary acceptance that occurs when resources are actually being fairly distributed across society, that is, to objective distributive justice (Zelditch, 2001).

Authorities also gain a great deal in terms of legitimacy when they follow clear norms of procedural justice, including impartiality, transparency, and respect for human dignity (e.g., Miller, 2001; Tyler, 2001a). Thus, implementing fair procedures as well as outcomes can provide a solid basis for establishing system legitimacy. And, as with distributive justice, procedural justice can be viewed as an objective property of a procedure. For example, in their classic work on procedural justice Thibaut and Walker (1975) compared the procedural justice of inquisitorial and adversary procedural justice using objective criteria. One such criterion was the ability to combat prior bias. They experimentally induced prior bias for or against the defendant and then had cases tried

using one of the two procedures. They reasoned that a just procedure should wash away the effects of prior bias, leading the proportion of guilty verdicts to be the same irrespective of the direction of prior bias. When evaluated against this objective criterion of justice, the adversarial procedure was more just than the inquisitorial system. Such evaluations had nothing to do with how the participants evaluated the justice of the procedures. Rather, they were linked to objective criteria defined by the experimenters.

We want to argue for the particular benefits that come from basing legitimacy on specific mechanisms that communicate and deliver substantive procedural fairness as defined by legal philosophers and scholars who are concerned not only with what people are likely to perceive as just (the descriptive question) but also with what *is* just (the normative question). In other words, we suggest the value of using procedures that both *are* just when evaluated in relationship to objective criteria and *are experienced as being just* by those involved in them.

The legitimacy of authorities is an especially promising basis for the rule of law because research suggests that it is not yoked to agreement with the decisions rendered by legal authorities. If people view as legitimate only those authorities who make decisions with which they agree, it would be difficult for legal authorities to maintain their legitimacy insofar as they are required to make unpopular decisions and to deliver unfavorable outcomes. Fortunately, from the perspective of legal authorities, studies suggest that ascriptions of legitimacy are tied to the perceived fairness of the procedures used by authorities to make decisions rather than to the favorability of outcomes *per se* (Lind & Tyler, 1988; Thibaut & Walker, 1975; Tyler, 1990; Tyler, Boeckmann, Smith, & Huo, 1997; Tyler & Smith, 1998). These results suggest that legal authorities may be able to maintain their legitimacy in the long term by making decisions in an ethically defensible manner.

People are more likely to regard the police as legitimate if they believe that the police exercise their authority through fair and impartial means (Sunshine & Tyler, 2003b; Tyler, 2001b). Indeed, the evidence suggests that procedural justice judgments are more central to judgments of legitimacy than are such factors as the perceived effectiveness of the police in combating crime. To the extent that people perceive law enforcement officials as legitimate, they are significantly more willing to defer to individual authorities (Tyler & Huo, 2002), and they are also more likely to be in compliance with the law in general (Sunshine & Tyler, 2003b; Tyler, 2006b). These observations hold true when people are reporting on their own personal experiences with legal authorities (Tyler, 2006b; Tyler, Casper, & Fisher, 1989) and also when they are evaluating system-level authorities such as the Supreme Court (Tyler, 1994; Tyler & Mitchell, 1994).

Perhaps most important, from the perspective of the legal system, a number of recent studies link judgments about procedural fairness to the willingness to accept particular legal decisions (Kitzman & Emery, 1993; Lind, Kulik, Ambrose, & de Vera Park, 1993; Wissler, 1995) and to generally follow laws and legal rules (Kim &

Mauborgne, 1993; Sparks, Bottoms, & Hay, 1996; Tyler, 2006b). Procedural justice cues play an especially important rule in securing compliance over time (Paternoster, Brame, Bachman, & Sherman, 1997; Pruitt, Peirce, McGillicuddy, Welton, & Castrianno, 1993). It is by now very clear that people's reactions to law and legal authorities are heavily influenced by their assessments of the fairness of legal procedures.

The procedural basis of legitimacy is especially strong with respect to public opinion concerning political and legal institutions. Studies of the presidency (Tyler, Rasinski, & McGraw, 1985), the legislature (Hibbing & Theiss-Morse, 1995, 2002), and the Supreme Court (Tyler & Mitchell, 1994) all suggest that when citizens are evaluating government institutions, they focus primarily on the fairness of the procedures by which the institutions make policies and implement their decisions. Research on work organizations also suggests that perceived legitimacy has a strong procedural basis (Elsbach, 2001; Tyler & Blader, 2000, 2005).

The procedural basis of legitimacy on an institutional level is consistent with the argument that support for the rules of governance (i.e., procedures and institutions) is theoretically and empirically distinguishable from support for particular individuals or their policies. Studies suggest that reactions to individual leaders and policies are more strongly linked to outcome desirability than are reactions to institutions (Rasinski, Tyler, & Fridkin, 1985). In general, however, it is support for the rules of governmental operation—what Easton (1965) referred to as “diffuse system support” (p. 444)—that is seen as crucial to long-term governmental stability.

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

The fact that, as system justification theory holds, people tend to perceive the status quo as relatively fair and legitimate means that perceptions of *injustice* should be taken very seriously by anyone who is committed to maintaining genuine system legitimacy. In the case of law, issues of distributive injustice are linked to questions about the appropriate or fair response to violations of the law (“just deserts”). To the extent that a wide rift develops between public opinion and legal doctrines about appropriate punishments in response to wrongdoing (e.g., concerning the severity of drug laws or the desirability of capital punishment), this can be an important sign that the legal system may be lacking in substantive justice and, over time, that it may eventually suffer in terms of perceived legitimacy and capacity for motivating widespread compliance with the law (Robinson & Darley, 1995, 1997).

IMPLICATIONS OF THE VALUE-BASED MODEL

Now that we have laid out the basic tenets of our value-based model, which emphasizes (1) system legitimacy as the basis of social influence and motivation to comply with the law and (2) genuine procedural fairness as the basis of system legitimacy, we are in a position to consider some further legal implications of the model. We focus on three areas of application in particular: reactions to rule breaking, restorative justice, and corporate wrongdoing. In each of these cases, our model makes different recommendations from those that are commonly derived from the deterrence model, which currently dominates scholarly and professional thinking about both criminal justice and business ethics.

Reactions to Rule Breaking

In this section, we return to the central question posed by the deterrence model, namely, what to do with people who break the rules so that neither they nor others will repeat the offense. A frequent justification of incarceration as a common method of deterrence is the notion that once in prison, people who have broken the law can be rehabilitated into citizens who will comply with the law in the future. Unfortunately, there is little evidence that the legal system in its present state effectively changes the future behavior of those who come before the law because of past illegal actions (i.e., to “reform” criminals; see Ellsworth & Mauro, 1998). Much of the fault, no doubt, lies with prison conditions, which are extremely unlikely to create the social and psychological circumstances necessary for learning and self-improvement to occur (e.g., Haney & Zimbardo, 1998).

The work of Darley and colleagues (2000) on rule breaking suggests that the same social values that can help to motivate rule following are also useful for understanding reactions to legal transgressions (see also Carlsmith et al., 2002). They find that people respond to rule breaking by seeking to restore a moral balance between the rule breaker and society. The focus of this work, however, is on how other members of society react to wrongdoing, and not on changes in the rule breakers themselves. If, as we have suggested, legitimacy and moral values are central to rule following, then one guiding concern with regard to rehabilitation should be with how to reconnect the offender to their original moral values.

Consider an example from a recent study of citizen-police encounters (Paternoster et al., 1997). In this study researchers examined what transpired when the police were called to homes to deal with issues of domestic violence. The concern of the study was with subsequent compliance to the law on the part of the abusive men whose behavior led to the initial call. The deterrence model would predict that compliance would be increased by threats and/or punishments meted out by the police. From a social psychological perspective, however, we would argue for the value and effectiveness of more constructive police efforts designed to create and maintain respect for the law on the part of the abuser.

The results of Paternoster and colleagues' (1997) study were consistent with our model of legitimacy and motivation. When the police treated abusers in a procedurally fair manner during their encounter, those abusers were more likely to comply with the law afterward. Fair treatment increased feelings of respect for the law and led abusers to be more willing to obey the law in the future. The influence of procedural fairness was greater than that of threatened or enacted punishments.

This study illustrates one of the core premises of psychological jurisprudence, as we understand it—that legal authorities should be concerned with fostering the shared commitment of citizens to overarching moral principles. To do this, authorities must be aware of citizens' values, their experiences with the legal system, and their judgments about the practices and policies of legal authorities. From this perspective, the key to successfully implementing the rule of law lies in an understanding of procedural fairness as the basis of legitimacy rather than in efforts to more effectively deploy coercive tactics.

Restorative Justice and Reintegrative Shaming

The most comprehensive attempt to reconnect offenders to societal norms and to their own sense of moral values is through *restorative justice* (Braithwaite, 1989; Roberts & Stalans, 2004). During a restorative justice conference the rule-breaking behavior is recognized and punished, but an effort is also made to encourage the rule breaker to recognize that his or her behavior violates social and moral codes that partially constitute the perpetrator's own self-image. As a consequence, his or her criminal behavior should be personally upsetting. Thus, an effort is made to use the incident of rule breaking as a way of encouraging the perpetrator to redouble his commitment to obeying the rules in the future.

To achieve these goals, the restorative justice movement advocates sentences such as formal acknowledgment of wrongdoing, public apologies, and acts of restitution that connect people with the wrongfulness of their actions. From a restorative justice perspective, transgressions and disputes arising from them should be resolved through “reintegrative shaming” techniques (Braithwaite, 2002). Reintegrative shaming combines strong moral disapproval of the offense with respect for the person who committed the offense.

The goal is to bring about reconciliation among victims, offenders, and the community at large. With regard to offenders, the primary goal is to encourage feelings of shame regarding one's crimes, accepting responsibility, and sincerely apologizing for them; this is intended to restore the dignity of offenders. Essential to this process is the social connection that perpetrators feel to their family, friends, and community, so these parties are present at restorative justice hearings, along with the victim and his or her family and friends. All those present are involved in reconnecting the offender to a sense of moral responsibility in relation to the community as a whole. This reconnection, it is hoped, will enhance intrinsic motivation to engage in self-regulatory actions that will work against future transgressions of the law. The restorative

justice argument mirrors the concern in procedural justice research with developing both formal and informal legal procedures that strengthen the influence of social and moral values on people's law-related behavior (Tyler & Darley, 2000).

Research results support the facilitative role of restorative justice conferences (Roberts & Stalans, 2004; Sherman, 1999). Studies suggest that, at least with regard to some types of crime, participating in a restorative justice conference leads to greater cooperation with the law in the future (Nugent, Williams, & Umbreit, 2003; Poulson, 2003). Such conferences, it seems, do increase the motivation to accept the law and the decisions of legal authorities and to be a law-abiding citizen. Work on restorative justice and reintegrative shaming provides further evidence that internal moral values play a pivotal role in motivating compliance with the law (Sunshine & Tyler, 2003b; Tyler, 2006b; Tyler & Huo, 2002). This work also suggests future directions for the rehabilitation of criminals that is based on sound social psychological principles.

Corporate Wrongdoing and Organizational Legitimacy

As with regard to criminal conduct in general, the dominant approach to the problem of corporate crime has been to focus on increasing penalties aimed at deterrence (Tyler, 2005). These efforts have encountered many of the same problems that deterrence efforts have encountered in other domains, including major difficulties with regard to surveillance and the tendency for corporations to accept possible risks associated with being caught for accounting fraud, environmental abuses, and other crimes as costs of doing business (e.g., Moore & Loewenstein, 2004). Another approach to ethical scandals at Enron, Arthur Andersen, WorldCom, Adelphi, Tyco, and many other corporations has been to blame wrongdoing on a "few bad apples," when the reality is that much of the fault lies with the barrel itself (e.g., Bazerman & Banaji, 2004; Tenbrunsel & Messick, 2004).

In this section, we focus on two types of values that have ramifications for the problem of business corruption. The first is the conviction by employees that their organization's rules and authorities are *legitimate*. Legitimacy in this context refers to the view by employees that they are responsible for obeying organizational rules (e.g., that the organization is entitled to have its rules and policies obeyed). Thus, issues of legitimacy apply not only to perceptions of government and law (Tyler, 1999), but also to perceptions of work organizations (Elsbach, 2001; Selznick, 1969; Suchman, 1995; Tyler & Blader, 2005). In work settings, legitimacy refers to the judgment that "the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Suchman, 1995, p. 574). If people feel that their organization has legitimacy, they will be motivated to defer to its rules and policies.

The second value is the conviction by employees that corporate policies are congruent with their own personal

moral values. Because of relatively widespread corporate wrongdoing, this congruence is often missing. If an employee believes that personal and corporate value congruence exists, then their own moral values motivate them to follow corporate rules because they see those rules as being consistent with—and developed from—a set of moral values that they have internalized. In legal settings, research shows that an important motivation that encourages people to bring their behavior into line with the law is their belief that many behaviors that are illegal are also immoral (Carlsmith et al., 2002; Robinson & Darley, 1995, 1997; Tyler, 2006b). Similar moral values shape cooperation within experimental games (Kerr, 1995; Kerr, Garst, Kiehle, & Harris, 1997; Kerr & Kaufman-Gilliland, 1994). When people feel that their organization acts in ways that are consistent with their own social and moral values, they will be more strongly motivated to support their organization. Serious problems arise when business leaders fail to define illegal activity as morally unacceptable and to foster organizational norms that are consistent with that definition.

Recent calls for greater attention to ethics in business school curricula and for more attention to ethical issues in work cultures follow from the notion that employees' values can be developed and activated within organizational settings (Bowie, 1999; Schminke, 1998; Trevino & Weaver, 2003; Tyler, 2005; Tyler & Blader, 2005). Because internalized moral values strongly affect employee rule following, the challenge is to create organizational climates that foster genuinely ethical goals and then harness the motivational power of employees' values to attain those goals. Fair market ideology and other system-justifying beliefs pose a threat to these efforts to the extent that they minimize ethical scandals, lead to system undercorrection, and rationalize rule-breaking behavior in the name of profit-related goals (Jost, Blount, et al., 2003).

The efficacy of drawing on genuine organizational legitimacy and internalized moral values is suggested by the results of research. While the use of sanctions remains a traditional (but not very effective) management strategy to secure employee compliance with organizational rules and policies, recent studies directly examine whether activating employees' ethical values can be an effective management strategy for securing compliance. The use of a self-regulatory model such as the one we are proposing was advocated long ago in the context of discussing the legal regulation of business (Selznick, 1969), and it has been advanced with increasing frequency in recent years (Darley et al., 2003; Gunningham & Rees, 1997; King & Lenox, 2000; Rechtschaffen, 1998; Suchman, 1995; Tyler, 2001b; Tyler & Darley, 2000).

Research shows that ethical concerns do indeed motivate self-regulatory behavior in organizational settings (Aalders & Wilthagen, 1997). This includes work focused on legitimacy (Human & Provan, 2000; Suchman, 1995; Tyler, 2006b; Tyler & Blader, 2000, 2005; Zimmerman & Zeitz, 2002), morality (Paternoster & Simpson, 1996; Tyler, 2006b; Tyler & Blader, 2000, 2005), and the general role of fairness in shaping social behavior (Lerner, 2003; Rabin, 1993; Tyler & Blader, 2000; Vandenberg, 2003).

Ethical values shape behavior when people believe that the rules of their organization are legitimate and hence ought to be obeyed, and/or that the values defining the organization are congruent with their own moral values, leading people to feel that they are morally obligated to support the organization.

At the organizational level, studies show that companies are reluctant to use their market power by lowering employee wages during recessions because they believe such an action will be viewed by employees as unfair (Bewley, 1999). In addition, companies often relinquish opportunities to press their market advantages when dealing with their customers due to concerns that they will be perceived as behaving unfairly (Kahneman, Knetsch, & Thaler, 1986). Ethical concerns also shape wage determination (Rees, 1993) and other parameters of employment relationships (Jolls, 2002). These studies suggest that companies are motivated to respond to serious ethical concerns because they believe that judgments of fairness shape people's reactions and behavior (Estreicher, 2002). Indeed, there is evidence suggesting that companies that are regarded as more ethical by employees, customers, and other constituencies also tend to be more profitable (Huselid, 1995; Margolis & Walsh, 2001) and, conversely, that more profitable companies tend to be perceived as more ethical (Jost, Blount, et al., 2003). Because, as we have suggested with regard to system justification and false consciousness, subjective appraisals of legitimacy can be wrong, the key to developing long-term ethical commitments is to maintain genuine rather than apparent organizational legitimacy that is based on normatively defensible standards of fairness.

CONCLUDING REMARKS

Our goal has been to demonstrate several ways in which psychological jurisprudence can inform a set of legal questions, especially those pertaining to the legitimate exercise of legal authority and the motivation of individuals and groups to adhere to the tenets of the legal system. It would be impossible for any review to consider all the relevant issues in the heterogeneous field of law and psychology, and we have not even tried to do so. Nor would it be possible to handle all of these issues within a single conceptual framework, especially given that the concerns of the legal system are what determine the agenda for the application of psychology to the law (e.g., Carson, 2003). We have opted for a more modest approach. We have considered a specific set of theoretical and empirical developments in social psychology that we think are broadly relevant to several areas of the law. These developments pertain to human motivation, social influence, procedural fairness, and system legitimacy and the relations among these constructs.

More specifically, we have suggested that the deterrence model makes a number of assumptions concerning human motivation to comply with the law and that at least some of these assumptions are untenable. A more realistic model takes as its starting point the notion that people are intrinsically motivated to follow internalized

moral values that are supportive of a system that is perceived as legitimate. Because perceptions of legitimacy can be inaccurate due to a number of system-justifying biases, a legal system that delivers substantive justice (and not just the appearance of justice) must be based on something other than consensus. We have suggested that one of the most solid foundations for such a system is a genuine commitment to normative standards of procedural fairness. This formulation suggests a number of consequences for reactions to rule breakers, restorative sentencing, and corporate malfeasance. Our hope is that by taking seriously both subjective (i.e., social and psychological) and objective (i.e., normative) factors with regard to justice and the law—as well as the relationship between subjective and objective factors—it is possible to develop a more sophisticated understanding of how citizens in a society like ours can be motivated to follow norms for appropriate conduct and, indeed, why they should.

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