Trust in justice and the legitimacy of legal authorities: Topline findings from a European comparative study

Mike Hough, Jonathan Jackson, Ben Bradford

Abstract

Issues of public trust in justice and institutional legitimacy are becoming increasingly salient in debate about criminal justice across Europe. Legitimate authority can be defined as having three interlinked elements: (a) legality (acting according to the law); (b) shared values (values that are shared by those with authority and those subject to that authority); and (c) consent (the sense amongst the policed of a moral obligation to obey the authority). According to this definition, legitimacy is present not only when individuals recognise the authority of institutions and feel a corresponding duty of deference to them (consent); it is also present when individuals believe that justice institutions have a proper moral purpose (shared values), and that justice institutions follow their own rules as well as the rules that govern everyone in society (legality). With this definition in mind, we analyse in this chapter data from the fifth European Social Survey on relationships between public trust in justice institutions and public perceptions of the legitimacy of these institutions.

Biographical details

Professor Mike Hough, Co-Director, Institute for Criminal Policy Research, School of Law**, Birkbeck, University of London**

Mike Hough began his research career in the UK Home Office, and was a member of the team that started the British Crime Survey. He set up an academic policy research centre in 1994, which is now based at Birkbeck, University of London. Mike's current research interests include: procedural justice theory and public trust in justice; crime measurement and crime trends; and sentencing and sentencing guidelines.

Dr Jonathan Jackson, Senior lecturer in the Methodology Institute and member of the Mannheim Centre for Criminology, **London School of Economics**

Jon's research focuses on fear of crime, trust in the police, and the legitimacy of legal authorities. He is one of the co-authors of a book entitled 'Just Authority? Trust in the Police in England and Wales', published by Routledge in 2012.

Dr Ben Bradford, Career Development Fellow, Centre for Criminology, University of Oxford

Ben's research is primarily concerned with issues of trust, procedural justice, legitimacy and compliance and cooperation in criminal justice settings. He has worked with a number of policing organizations on attempts to improve operational understandings of these issues.

Trust in justice and the legitimacy of legal authorities: topline findings from a European comparative study

Mike Hough, Jonathan Jackson, Ben Bradford

Introduction

This chapter presents findings on public trust in justice drawn from the fifth European Social Survey (ESS), carried out in 28 countries in 2010/11. The dataset used here covers 26 of the 28 countries, and has a total sample size of almost 51,000 people. The analysis is thus on a large scale, and serves as an exemplar of a particular approach to comparative research, involving empirical testing of a theoretical model. We and colleagues designed the module on trust to test an elaborated version of Tyler's (Tyler 2006a; Tyler and Huo 2002) procedural justice theory, which posits that fair treatment by police and other justice officials yields public trust in justice, which in turn consolidates the legitimacy of institutions of justice, and thus public cooperation and compliance with the law. To anticipate our conclusions, we find good support across a variety of European countries on the links between trust in the police and people's perceptions of the legitimacy of the police.

We first sketch out the political context that has led to growing interest in procedural justice ideas, initially in the United States but increasingly in Europe. We then summarise theories of procedural justice and the particular variant tested in the ESS. Then, after a brief account of the methodology of the ESS, we outline some initial findings, including multivariate analysis exploring the relationships between trust and perceptions of legitimacy. We end the chapter with some reflections both about the policy implications of the study and about the further development of comparative research of this sort across Europe.

The political context

Although different industrialised countries have by no means followed the same policy trajectories over the last quarter century, it is possible to discern two common trends, which have had significant effects in the criminal justice arena. The first of these is the diminished role of the 'technocratic expert' in social policy, and a greater responsiveness to the voice of the public (cf Giddens, 1991). This trend has been particularly marked in countries such as the UK and the US with adversarial political systems, on the one hand, and attachment to neo-liberal market principles, on the other. In these countries, political responsiveness to

public opinion has taken on an overtly populist quality; in criminal justice, the phenomenon of penal populism is well documented, whereby political leaders promote policies largely or entirely for the electoral advantage they confer, rather than from knowledge or conviction that they are the best policies. Several chapters in this book (Cavadino and Dignan, 2013; Lappi-Seppala, 2013; Nelken, 20013; Sack and Schlepper, 2013) consider the extent to which this trend is common to all European countries; it is clear from these that a tendency to populism is widespread but by no means universal.

Intertwined with this has been the development of a 'small state' style of governance in which politicians specify the *outcomes* required of state institutions such as the police, usually in the form of numerical targets, but leave the detail of the *processes* to local agencies. These principles of 'New Public Management' (NPM) are often applied in parallel with processes of 'marketisation' – where private sector companies compete for contracts to provide public services – and consumer choice – where service recipients can exercise control over the services they receive (cf Hood, 1992).

Even the most sceptical commentators on NPM recognise that some benefits have accrued from these reforms. Nobody wants to see sclerotic, overweight state bureaucracies marching ponderously to the beat of their own drum – and this was certainly a reality in some UK public services and utilities in the second part of the last century. At the risk of generalisation, those public services with clearly defined 'customers' have seen improvements in the quality and responsiveness of services – notably in the health field. However, one of us has argued elsewhere (eg Hough, 2007) that criminal justice policy has suffered badly from the combined effects of penal populist and NPM policies. Politicians have adopted a crude and simple instrumental discourse about "the war on crime" in which weapons of deterrence and incapacitation are deployed against "criminals" on behalf of the "law abiding majority". They have found themselves trapped in this discourse partly because they judge that this is the only one that will be favourably received by the media and, behind them, the electorate; and equally, the logic of NPM has driven politicians to adopt simple numerical targets that are built around crime and detection statistics.

The adoption of this discourse has, in the UK context at least, led both policy and practice to privilege costly and questionably effective strategies designed to secure strategies of *instrumental* compliance with the law and to ignore significant alternatives which place greater importance on strategies of *normative* compliance. From the early 1990s onward, ideas about securing consent to the rule of law and about securing the legitimacy of

institutions of justice became submerged in the storm of political promises to crack down hard on crime. Strategies for maintaining social order were assessed against narrow criteria of short-term crime control, and minimal attention was given to their impact on people's normative commitment to treat others in a way that respected their rights.

When we had the opportunity to design a module of trust in justice for the ESS, the political agenda that underpinned our scientific one was to re-sensitize policy to issues of legitimacy and normative compliance. So at this point, it makes sense to set out in a little more detail what we mean by theories of normative compliance.

Theories of normative compliance and procedural justice

Procedural justice theories can be located within a broader set of theories of normative compliance, or 'compliance theories', which can be traced back to Durkheimian and Weberian thinking about the roots of social order. On the one hand, there has been increasing (or perhaps, more accurately, rediscovered) interest over the last two decades in the relationship between 'political economy' (cf. Reiner, 2007; Cavadino and Dignan, 2006, this volume), which trace the connections between the social distribution of wealth and attachment to – or detachment from – social norms. The emergence of neo-liberal economic policies is obviously implicated in this trend. Theories of institutional anomie (cf. Messner and Rosenfeld, 2001, 2010) serve as good examples of this line of thought. According to these, rapid transitions towards the values of free-market economies can unbalance and weaken traditional normative systems of social control. More generally, the idea that high levels of income inequality fuel crime is almost a criminological truism, with a long sociological pedigree – even if the evidence is less conclusive than some would expect (cf van Dijk, this volume).

On the other hand, there are compliance theories about the impact on societal norms of the institutions of formal social control, such as the work of Robinson and Darley, and that of Tyler. Thus Robinson and Darley (1997) argue that if the law's potential for building a moral consensus is to be exploited, judicial outcomes, and especially court sentences – must be aligned at least to some degree with public sentiments. Tyler (e.g. 2006a, 2010, 2011) emphasises the need for justice institutions to pursue fair and respectful *processes* – in contrast to *outcomes* – as the surest strategies for building trust in justice, and thus institutional legitimacy and compliance with the law. This is the central hypothesis in procedural justice theory.

The two broad families of compliance theory – with their different emphasis on securing social justice and a fair system of justice – are obviously compatible. Social justice and fairness in the justice system are both likely to be preconditions for a well-regulated society. However, only the second family, and within this, procedural justice theories in particular, carries direct implications for policy and practice within criminal justice. Many criminologists would like to see the crime-preventive dividend of a fairer distribution of income and wealth, but for ministers of justice and for senior justice officials, these arguments are at best subsidiary to ones about what they should do in the 'here and now' of improving systems of justice. Policies to achieve social justice are probably best justified in their own terms, and not in terms of their spin-off benefits for crime control.

Procedural justice theories

Procedural justice theories are, in essence, theories about the use of authority. Central organising concepts are trust in justice, legitimacy, cooperation and compliance. Public trust in justice helps to build public beliefs about the legitimacy of the institutions of justice. This confers authority on them, and cooperation and compliance flows from this legitimate authority. This is basic and uncontentious political philosophy. Any thoughtful political analyst takes for granted that power relations achieve stability only if naked power is transformed into authority by processes of legitimation. And as we now live beyond the reach of both *traditional* and *charismatic* authority[1], it is the processes by which *rational* authority are legitimated that are now of interest to political analysts.

If the concept of legitimacy has only recently re-emerged as a key one in Anglophone criminology[2], political philosophers have devoted considerable energy to its analysis. Legitimacy is the right to rule and the recognition by the ruled of that right (Sternberger, 1968; Beetham, 1991; Coicaud, 2002; Tyler, 2006b; Bottoms and Tankebe, 2012). Social institutions need legitimacy if they are to develop, operate, and reproduce themselves effectively (Easton, 1965). However, it needs to be recognized that legitimacy is a very 'slippery' concept to handle. It is a normatively laden term used by political philosophers to describe whether states (or state institutions) meet certain standards. Yet, it is also used as a more neutral term, to describe whether, as a matter of fact, those who are subject to authority confer legitimacy on that authority. Thus Hinsch (2008) has distinguished between empirical (or subjective) legitimacy and normative (or objective) legitimacy.

---

[1] Those who take issue with this claim can treat it as an aspiration rather than a description.

[2] See Hough, 2007, for an account of the way in which both criminal policy and criminology allowed the concept to disappear from usage in the 1990s.

In defining normative legitimacy we would follow David Beetham (1991) in arguing that an authority has legitimacy when three preconditions are met[3]:

1. The 'governed' offer their willing consent to defer to the authority
2. And this consent is grounded on a degree of 'moral alignment' between power-holder and the governed, reflected in shared moral values.
3. The authority's actions conform to standards of legality (acting according to the law).

Thus legitimacy is present not only when individuals recognise the authority of institutions and feel a corresponding duty of deference to them (consent); it is also present when justice institutions act according to a proper moral purpose (they share a *normatively justifiable* set of values with those they govern), and when they follow their own rules as well as the rules that govern other members of in society (legality). Some might argue that legitimacy entails only public deference to an authority. However, people can and do defer to the authority of states that against any normative criteria lack legitimacy. Take for example the case of a corrupt populist dictatorship that flouts the rule of law but commands 90% popular support, based on a dystopian moral alignment between dictator and people; or equally, take the case of an autocratic dictatorship that observes the rule of law but exacts deference to its authority by overwhelming force. In neither example would we wish to say that the state could be regarded as exercising legitimate authority, as in each case one of the key criteria would be absent.

Making normative assessments about the legitimacy of state authority involves subjective judgement. By comparison, it is easy to measure empirical legitimacy – whether those who are governed, and those who exercise authority, regard the use of that authority as legitimate. Thus we would argue that people regard state authority as legitimate if:

- They feel an obligation to defer to state authority, and
- this sense of deference derives at least in part from a sense of moral alignment, and
- at least in part it derives from a perception that the state acts with legality and 'sticks to the rules'.

---

[3] This is a somewhat broader definition than that used by Tyler, at least in his early work, which tended to equate perceived legitimacy with deference to authority.

As we shall show, it is quite straightforward first to devise reliable indices of these beliefs, and then to examine the inter-relationships between them and the relationships with other beliefs and experiences. We would stress that creating a public sense of moral alignment doesn't actually require the state to share moral values with the governed, any more than a state actually needs to act with legality in order to convince people that they meet this standard.

Instrumental versus normative compliance

For crime-control polices to be effective, policy makers need to be cognizant of people's motivations to comply with the law. But how can institutions shape public behaviour? Based on the idea that offenders and would-be offenders are responsive primarily to the risk of punishment, many criminal policies are premised on the presence of formal policing and severe sanctions for wrong-doers (Tyler, 2007). If this account has empirical support, agents of criminal justice must send out signals of strength, effectiveness, force, detection and justice (Hough *et al.,* 2010): social control mechanisms and credible risks of sanction hope to persuade rational-choice individuals that – while otherwise desirable – a criminal act is not worth the risk (Tyler *et al.,* in press).

Yet, personal and normative commitment to law-abiding behaviour may be just as important – or more important – in shaping people's compliance (Tyler, 2006a; Robinson and Darley, 2004). A normative model of crime-control posits that institutions can secure compliance and cooperation by developing policies that generate legitimacy (Tyler, 2006a; Tyler and Huo, 2002). Based upon the idea that people comply with the law because they believe it is the right thing to do, Tyler's procedural justice model of policing states that when institutions act according to principles of procedural fairness, this helps sustain and strengthen the ability of legal authorities to encourage citizens to regulate themselves (Tyler, 2008). Importantly, institutions can thereby avoid the cost, danger and alienation that are associated with policies based on external rules underpinned by deterrent threat (Scholhofer *et al.,* 2011).

It is a straightforward enough idea that people are more likely to comply with the criminal law, and with law officers when these are seen to be fair and even-handed. In reality however, many European countries have seen a progressive toughening up of their criminal justice policies, and a growing political impatience with what is seen as a debilitating culture of human rights. As discussed above, there has been a marked coarsening of political and media discourse about crime and justice (cf. Lappi-Seppälä, this volume). It seems fairly clear that there are structural pressures on politicians – which are intense in some forms of

'adversarial' two-party democracies – to offer tough, no-nonsense, populist solutions to crime problems. The difficulty with this is that no-nonsense solutions often tend to the genuinely nonsensical, premised on the faulty assumption that persistent offenders adopt the form of *homo economicus,* fine-tuning their criminal behaviour in the face of varying levels of deterrent threat. A wide – indeed divergent – body of criminological theory and evidence suggests this is simply not the case, or is at least only a rather small part of the overall story (e.g. Becker, 1963; Gottfredson and Hirschi, 1990; Katz, 1987) Criminal justice politicians risk getting trapped within these over-simplified economic theories of instrumental compliance. This is not to argue that instrumental strategies for securing compliance are redundant; but to place them as the centrepiece of justice policy is a fundamental misjudgement.

Tyler (2009, 2010, 2011) argues that strategies of instrumental compliance are costly and ineffective. He suggests that motive-based, voluntary self-regulation based on perceptions of the legitimacy of the law is more effective, more economical and more durable over time. If such a vision is to be even partly achieved, we need to nudge political and public debate towards a greater appreciation of the normative dimension in regulating behaviour.

The first step in this direction must be to provide persuasive evidence that the basic claims of procedural justice theory are sustainable. As we have seen, much of the empirical evidence in support of procedural justice theory comes from the United States, and one could construct an argument in support of American exceptionalism – that the unique history of the country had produced a culture which is atypical in its emphasis on the legitimation of state authority. On the other hand, one might argue that the relationships between a state authority's fairness, legality, legitimacy and capacity to command compliance are cultural universals. This is, of course, an empirical issue, and now we shall consider how we have set about testing the version of procedural justice theory that we have sketched out above in a comparative European setting.

Using the European Social Survey to test procedural justice theory in Europe
The European Social Survey (ESS) is an academically-driven social survey designed to chart and explain the interaction between Europe's changing institutions and the attitudes, beliefs and behaviour patterns of its diverse populations. The ESS was established in 2001 and fieldwork for the sixth sweep was conducted in late 2012. A central coordinating team runs the survey, and is funded by the European Commission. Each participating country covers the costs of employing its own country coordinator, translating the questionnaire and

commissioning fieldwork. Although not all countries achieve this, the aspiration is that countries should have probability samples of the adult (16+) population, with high response rates, interviewed face-to-face using CAPI (computer assisted personal interviewing). The survey is recognised currently to be one of the highest quality cross-European surveys. The questionnaire comprises an invariant core of questions asked of all respondents in each round, and a series of rotating modules which are included in only some rounds. Academics are invited to bid for space on the questionnaire in each round. Fieldwork for Round 5 of the ESS was done in 2010/11; 28 countries took part (some of which were 'European' in only quite a loose sense); and a dataset on 26 countries became available for academic analysis in early 2012, comprising 52,041 interviews.

We and colleagues bid for space in Round 5 for a module on 'trust in justice'. We were allocated 45 questions, which took around 20 minutes to administer. Taking account of the fact that the dataset included demographic variables and other relevant variables – covering topics such as personal and political trust, fear of crime, and victim experience – we had access to a very significant resource for criminological research.

From the start we designed our part of the questionnaire as a theory-testing project[4] about the ways that public trust in justice related to the perceived legitimacy of justice institutions and public cooperation and compliance. As in Tyler's (2003) work, we hypothesised a set of 'classic' procedural justice relationships between: fair and respectful treatment of the part of justice officials; a consequent sense of the legitimacy of institutions of justice on the part of the public; resulting in greater preparedness to cooperate with the police and the courts, and to comply with the law. And as in Tyler's research, we expected to find that public trust in the fairness of justice officials would a stronger predictor of perceived legitimacy than trust in effectiveness and competence. The most significant way in which we developed procedural justice theory was to operationalize the concept of moral alignment between the public and the institution as of justice. In other words, we set out to test empirically a version of procedural justice theory that combined elements of Tyler's work with that of Beetham. The key constructs that we set out to measure in the module are set out in Box 1.

Brief account of the methodology

Wherever possible in the module we developed scales, combining two or more questionnaire items to measure these and other concepts. In presenting findings on the

---

[4] See www.europeansocialsurvey.org/index.php?option=com_docman&task=cat_view&gid=145&Itemid=80 for a comprehensive guide to the module.

relationships between concepts, we have mainly relied on multivariate analysis, using structural equation modelling to estimate conditional correlations between a set of latent variables. Before presenting the key results of this theory testing analysis, however, it is helpful to give a flavour of the variation across countries and across country types using charts to present 'league tables' findings for selected measures.

Box 1   Some of the key concepts measured in the Trust in Justice module of ESS Round 5

a.   Trust in justice institutions
      i.   Trust in police effectiveness
      ii.   Trust in police procedural fairness
      iii.   Trust in police distributive fairness
      iv.   Trust in court effectiveness
      v.   Trust in court procedural fairness
      vi.   Trust in court distributive fairness

b.   Perceived legitimacy
      i.   Consent to police authority (a sense of obligation to obey the police)
      ii.   Consent to court authority (a sense of obligation to defer to the authority of the courts
      iii.   Moral alignment with the police
      iv.   Moral alignment with the courts
      v.   The perceived legality of the police
      vi.   The perceived legality of court officials

c.   Willingness to cooperate with the police and courts
      i.   Preparedness to report crimes to the police
      ii.   Preparedness to identify suspect to the police
      iii.   Preparedness to act as a juror in court

d.   Compliance with the law: self-report measures of law-breaking over the past 5 years

---

In grouping countries into types, we have distinguished between the following: Neo-liberal; Conservative corporatist; Social democratic corporatist; Southern European; Post communist; and Israel. There are several contributing sources, but no single one. Esping-Andersen went for three broad types of contemporary capitalist political economy: the free-market *neo-liberal* polity. exemplified archetypally by the United States of America; the more communitarian *conservative corporatism* exemplified by Germany and the *social democratic* corporatism found in the Nordic countries (the prime example being Sweden). Cavadino and Dignan adopt this in their 2005 book (and also in their chapter for the European Handbook). We (and others) have added the South European category (also labelled by some as the

Latin Rim). Post-communist is self-evident (and doesn't figure in most of the classifications, because the classifiers didn't stretch that far east.) Israel obviously fits into none of these categories.

At this stage we have no firm hypotheses as to why trust in the police and its perceived legitimacy should vary across these groups of countries. Our analysis here is exploratory and descriptive, rather than oriented toward theory testing (examining, for example, cross-level interactions between national factors and individual levels of trust). It is not however difficult to come up with a set of broad expectations about the types of patterns we might identify. For example, the social democratic Nordic countries are classic high-trust societies, in marked contrast to their post-communist counterparts, and it would be surprising if trust in the police was not affected by the broader climate of social and institutional trust in a particular context. Similarly, we might suggest that the links between trust and legitimacy will be stronger in more socially fractured and divided neo-liberal societies or post-communist societies, since traditional authority structures have destabilised, leaving the legitimacy of institutions more contingent, open to challenge, and implicated in a continuous process of testing against perceived norms of performance and behaviour. By contrast, in the (somewhat) more stable and cohesive conservative corporatist and social democratic states, the legitimacy of key institutions may be taken more as a social given, resulting in relatively weaker links between the perceived behaviour of the police and its legitimacy. Many more such ad hoc expectations are possible, and the challenge for future research will be to derive a plausible set of specific hypotheses, well grounded in theory, about the variation in trust and legitimacy relationships across the proposed classification (or some analogue of it).

Variations in trust and legitimacy across country

We present below weighted comparative data on levels of public trust and police legitimacy across Europe. While Round 5 of the European Social Survey used scales to measure most aspects of trust and legitimacy with respect to the police, we present averages or proportions related to one single measure for each dimension. So, for example, we present the proportion of people in each country who trust the police to treat people fairly (in fact, we show in Figure xxx the proportion who think that the police treat people fairly either 'not very often' or 'not at all often').

We do this because measurement equivalence across country is yet to be established; and it is certainly beyond the scope of this chapter to do so. The issue of measurement equivalence considers whether a series of survey questions "work the same way" in all of the countries. In the current context, statistical latent variable models are used to represent measurement of concepts (such as trust and legitimacy) by multiple questions. But a pressing challenge not just in the current investigation, but in cross-national survey research in general, is the comparability or equivalence of such measurement across countries. If we were to assess whether levels of trust and legitimacy vary across Europe, we would first examine the issue of equivalence of measurement, before second (assuming equivalence) estimating latent means and proportions. We leave this complex and difficult task to another time, focusing instead on single indicators.

Let us first consider trust in police effectiveness, focusing on citizens' views on how quickly the police would arrive if a violent crime occurred near their home (see Figure xxx; note that the countries are grouped according to our six-category scheme and are ordered within each grouping from low levels of trust to high levels of trust). ESS respondents were asked to rate the speed of police response (arrival at the scene of a violent crime) on a scale of 0-10. We did find relatively little variation in this measure across the 26 countries, with most ranging from 6.5 (Switzerland, with the highest mean) and 4.2 (Ukraine). Despite stereotypes of Scandinavian or northern European efficiency and southern or eastern European tardiness, it seems that citizens have broadly equivalent beliefs and expectations about the ability of the police to turn up promptly when needed (although is of course possible that a score of 6 in Hungary means something rather different to a score of 6 in Denmark – see above).

**Figure 1: Trust in police effectiveness, by country**

How quickly would police arrive at a violent crime/burglary scene near to where you live?
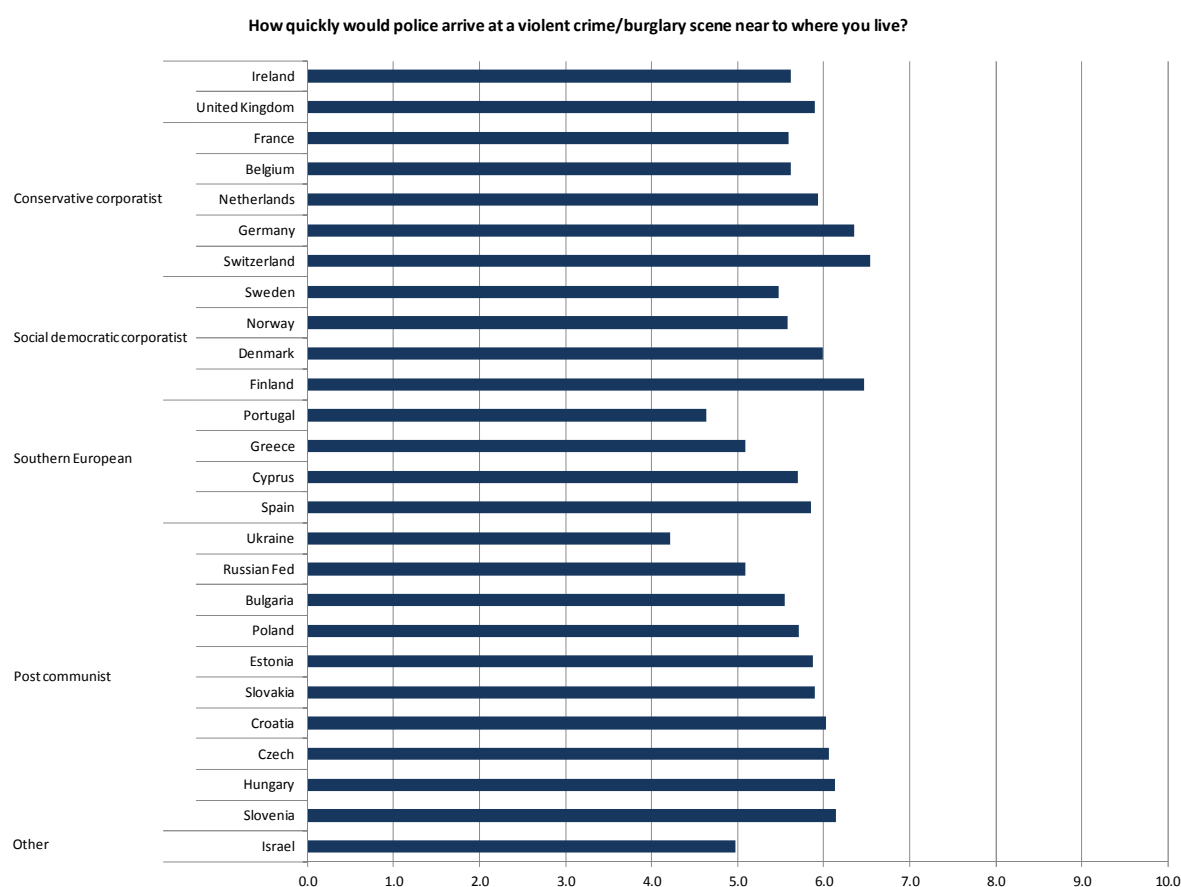
Question: **"**If a violent crime or house burglary were to occur near to where you live and the police were called, how slowly or quickly do you think they would arrive at the scene? (11-point scale running from slow to quick.)

Figure 2 shows that opinions of the procedural fairness of the police vary more widely across Europe. We asked respondents how often the police treat people fairly, with responses ranging from 'very often' to 'often' to 'not very often' and 'not at all often'. Figure 2 plots the proportion of people who say either 'not at all/not very often' (as opposed to 'often or very often'). Ukraine, Russian Federation and Israel have the least positive views on how the police treat people, while Denmark, Finland, Norway and Spain have the most positive views.

In contrast to the picture in relation to trust in police effectiveness, we find here significant variation across the different *groups* of countries. Trust in the fairness of the police is highest in the social democratic Scandinavian countries, followed by the neo-liberal fringe of UK and Ireland and the conservative corporatist states. Trust in police fairness then declines as we move south and east, to what appears to be catastrophically low levels in the Russian

Federation, the Ukraine, and Israel. It appears on this basis that our proposed country classification has some descriptive power, although we should stress that we are far from asserting any kind of causal associations between political economy and trust in the police. Yet, variation *within* the groups is equally noteworthy, particularly in the case of the post-communist countries.

Figure 2: Trust in police fairness

Believe police treat people with respect not at all or not very often
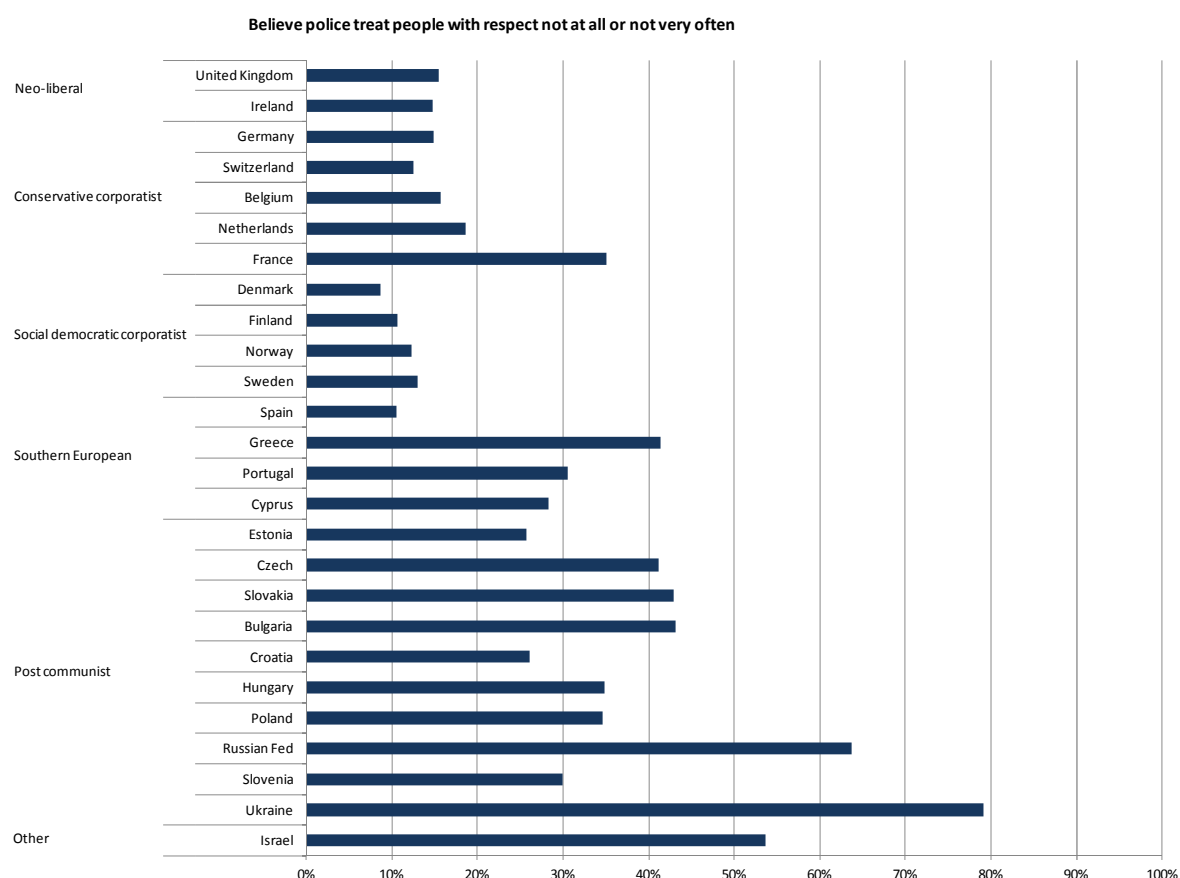
Question: "Based on what you have heard or your own experience how often would you say the police generally treat people in [country] with respect? (4-point scale, not at all often, not very often often, or, very often?)

What about the distributive fairness, or fairness of treatment of different social groups, according to socio-economic status, of the police across Europe? Figure 3 shows the proportion of people who think that when dealing with victims of crime, the police treat poor people worse than rich people. The countries least trusting of the police in this regard are Ukraine, Greece, Russian Federation, Slovakia and Israel. Netherlands, Denmark, Finland and Estonia score relatively well on this measure. Variation here appears less closely

14

correlated with country type, although, in general, perceptions of distributive fairness are worse in the southern European and post-communist states and more favourable in the social democratic, conservative corporatist and neo-liberal countries.

Figure 3 Trust in police distributive fairness, by country

Believe that poor people treated worse by police
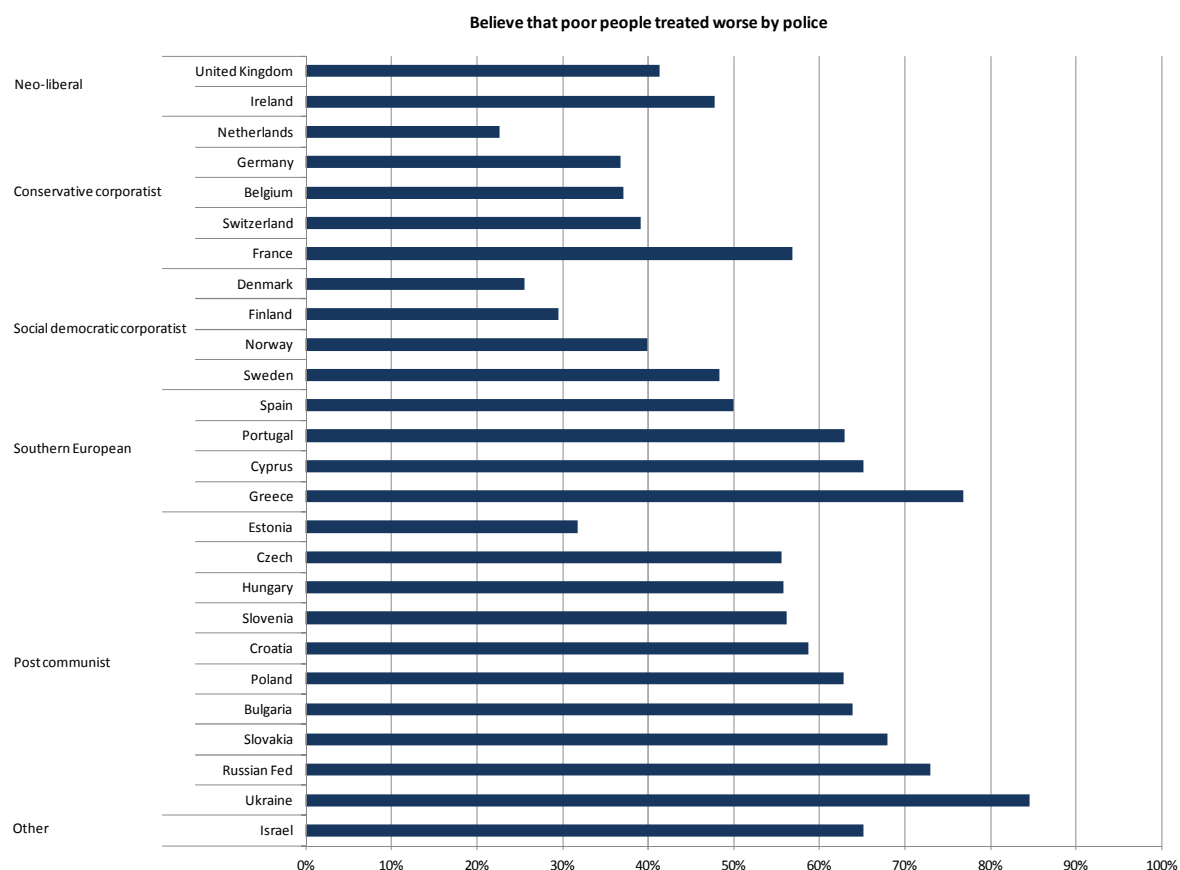
Question: "When victims report crimes, do you think the police treat rich people worse, poor people worse, or are rich and poor treated equally? Choose your answer from this card. (3-point scale: Rich people treated worse, Poor people treated worse, Rich and poor treated equally)

When do the police hold legitimate authority? From the perspective of the policed, police legitimacy has three dimensions, and the first is felt obligation to obey. Figure 4 shows the average levels of feelings of duty to obey the police even if one does not understand or agree. We see that felt duty to obey is highest in Denmark, Finland, Sweden and Cyprus. By contrast, felt duty to obey is lowest in Russian Federation, Ukraine and Slovenia. [Felt obligation to obey is thus high across northern and western Europe (and highest in social democratic states) and lowest in the post-communist states. Note that while Israel (and to a

15

lesser extent Hungary) scored low on the measures of distributive and procedural fairness both scored high on the measure of felt obligation.

Figure 4   perceived legitimacy (felt obligation to obey the police), by country

Believe they have a duty to do what the police tell them to do
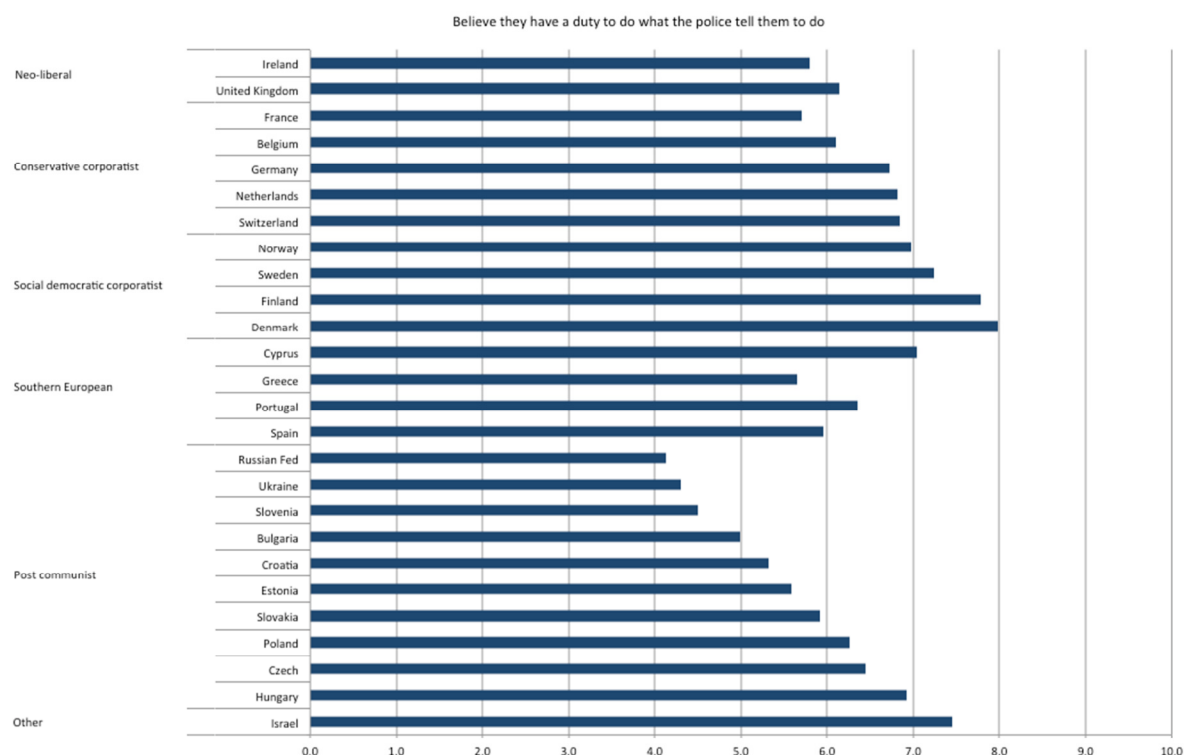
Question: "To what extent is it your duty to do what the police tell you even if you don't understand or agree with the reasons? (11-point scale, running from 'not at all' to 'completely'.)

The second dimension of police legitimacy is moral alignment. Conferring the right of power to the police may partly depend upon whether the policed feel an obligation to obey (i.e. they recognize its authority and influence), but it may also partly depend upon whether the policed they feel morally aligned with the institution (i.e. they believe that its power is normatively justified). Beetham argues that legitimacy cannot only be about obedience and the consent of citizens, but must also encompass the justification of authority by those subject to it. Foundedin a sense that the police operate according to a shared set of general values and principles, the justification of police authority is here measured by questions such as 'The police generally have the same sense of right and wrong as I do'. These items are assumed to indicate whether or not people believe the police are policing according to a shared vision of appropriate social order.

Figure 5 shows the proportion of people who agree with the statement 'The police have the same sense of right and wrong as I do'. We see that moral alignment is highest in Denmark, France, Sweden and Norway. By contrast, moral alignment is lowest in Estonia, Cyrpus, Poland and Russian Federation. The pattern here is broadly similar to that in relation to felt obligation, and citizens of northern and western European countries generally felt more morally aligned with their police, while scores on this measure were generally lower in the post-communist east. There remain outliers within all the groups – feelings of moral alignment were relatively strong in Ukraine, Hungary and Greece for example, and relatively weak in Belgium.

Figure 5 Perceived moral alignment with the police, by country


Believe that police have the same sense of right and wrong
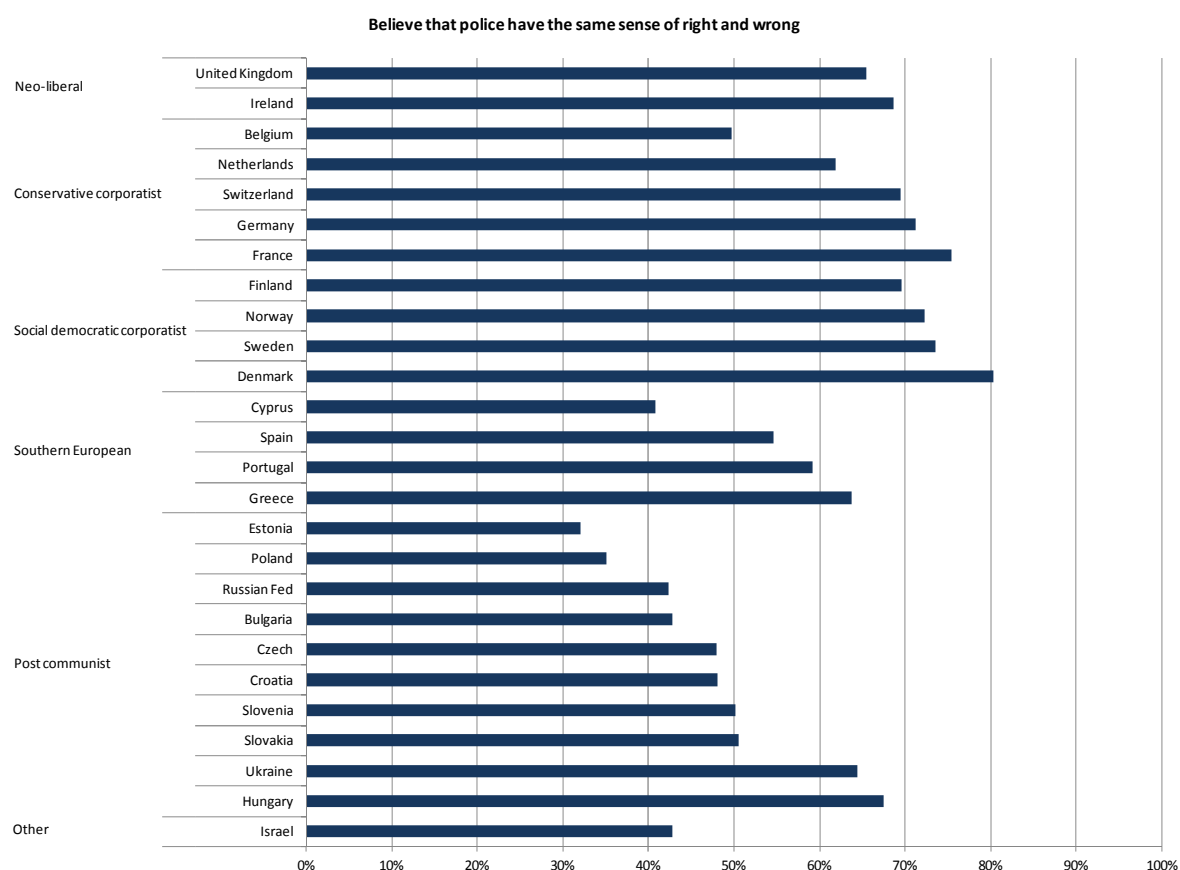
Question: "The police generally have the same sense of right and wrong as I do." (Five point scale, running from completely agree to 'completely disagree'.)

The final aspect of police legitimacy is the legality of their actions, or more specifically the perceived legality of their actions. For the police to have the right to rule, they must not abuse their power by acting above the rule of law. Figure 6 shows the average levels of

people's beliefs that the police take bribes. We see that police bribe-taking is seen to be lowest in Denmark, Finland, Norway and Sweden. By contrast, police bribe-taking is seen to be highest in Ukraine, Russian Federation, Bulgaria and Slovakia. There is again significant variation by country type. Perceptions of police corruption were most favourable in the social democratic Scandinavian states and least favourable in the Southern European and post-communist countries.

Figure 6 Perceived police legality, by country
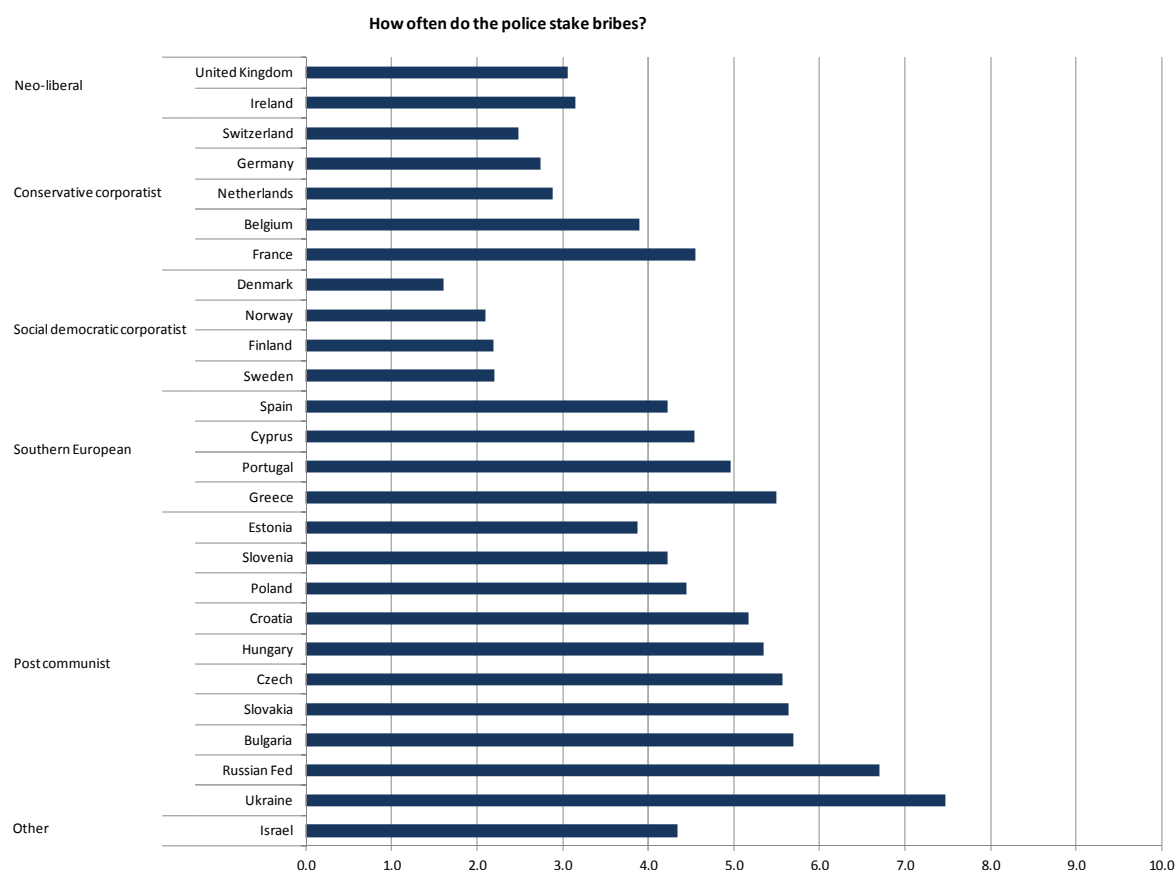
Question: "How often would you say that the police in [country] take bribes? (11-point scale where 0 is never and 10 is always.)

Testing procedural justice hypotheses about the predictors of police legitimacy

As described above, procedural justice theories maintain that (i) trust in institutions – and particularly trust in their fairness – is predictive of the legitimacy granted to them by those they govern; and (ii) the legitimacy of institutions is predictive of individual's willingness to cooperate with them and, when they are part of the criminal justice system, of individual's readiness to comply with the law. In this part of the chapter, we focus on the initial part of the

process: namely, the links between public trust and police legitimacy. We leave the broader picture – examination the links between people's encounters with the police, trust, legitimacy, cooperation and compliance – to future work.

We confine our attention, therefore, to the associations between public trust in police effectiveness, procedural fairness, and distributive fairness, on the one hand, and the three components of legitimacy – felt obligation, moral alignment and perceived legality – on the other. In line with the general predictions of the procedural justice model, we expect that trust in the fairness of the police will be the most important predictor of legitimacy across most if not all of the countries included in the analysis. If this is indeed the case, such a finding would seem to have significant policy implications for European criminal justice policy – particularly if, in the same countries, the legitimacy of the police can at a later date be linked to cooperation and compliance.

We used latent variable techniques to generate measures of trust and legitimacy that are more accurate and reliable than the single-item indicators used above (see Jackson et al. 2011). Moreover we tested the model separately for each country. This means that we estimate conditional correlations between the different dimensions of trust and legitimacy in each country. But we also allow the relevant measurement models to differ in each; we allow the factor loadings and intercepts of each measurement model to be different. Again, it is beyond the scope of the current chapter to address measurement equivalence, perhaps incorporating non-equivalence into a broader multi-level structural equation model.

Taking each component of legitimacy in turn we find, first, that trust in police procedural justice is the strongest and most consistent predictor of felt obligation to obey. This association was positive and statistically significant in all 26 countries. Trust in police effectiveness and distributive fairness were much less consistent predictor of obligation to obey, although in some countries – notably the UK – there were significant and substantively large associations between trust in effectiveness and this component of legitimacy. Not shown here for the reason of space, the country classification appeared to have little explanatory power, with large variation within as well as across groups.

Trust in police procedural fairness was also the most important predictor of the second component of legitimacy, 'moral alignment'. This association was positive in all countries, although it generally seemed to be smaller in magnitude than the link between procedural justice and felt obligation. The associations between trust in police effectiveness and

distributive fairness and moral alignment were again both weaker and less consistent. Further (and again not shown here for the reason of space) there was as before little discernible patterning by country type – in particular, the procedural justice–moral alignment link appeared relatively invariant across all the countries shown.

The picture changes as we turn to the legality component of legitimacy (measured by eleifs about corruption). While trust in police effectiveness and procedural justice are only weak and inconsistent predictors of this component of legitimacy, there appears to be stronger associations between trust in distributive justice and perceptions of corruption. Precisely why this might be is at this stage unclear: one interpretation might be that people perceive corruption as enabling or entailing an unfair distribution of resources or outcomes.

Taken together, these results seem to support our original hypotheses. Across the 26 countries included in the analysis, trust in police procedural justice was the strongest and/or most consistent predictor of legitimacy. Yet, trust in effectiveness and distributive justice was also important in some countries, and particularly in relation to the legality component of legitimacy. The empirical legitimacy of the police across Europe appears to be strongly founded in trust in the procedural fairness of its behaviour but, unsurprisingly, other factors are also in play and, in any particular context, may attain major importance.

Unlike the situation in relation to *mean levels* of trust and legitimacy, where we identified some clustering by country type – with, recall, the social democratic Nordic states generally achieving the highest levels of trust and legitimacy and the post-communist eastern European states suffering the lowest – there was less discernible patterning to the strength of the *associations between* the different aspects of trust and legitimacy. These were either broadly similar across the countries included in the analysis, as in the link procedural justice and moral alignment, or variable across countries in a way that did not appear to be explained by their position in the proposed classification, as in the link between trust in the effectiveness of the police and felt obligation to obey. Disentangling these relationships is a task beyond the current chapter, although we note that the consistent, strong links between procedural justice and legitimacy might be taken to infer that, whatever the empirical level police legitimacy in a country, the perceived fairness of its activities is an important antecedent factor.

These findings are summarised in Figures 7, 8 and 9. These show how the three dimensions of trust in the police (trust in police effectiveness, trust in their procedural fairness and trust

in their distributive fairness) related, respectively to the three dimensions of perceived legitimacy (perceived obligation to obey, perceived moral alignment and perceived legality). For each country the strength of the relationship is indicated by the positioning of the dot on a scale which has positive and minus values. The position on the scale indicates the 'effect size' of the conditional correlation between variables in our structural equation models. High positive scores mean strong positive correlations, and high negative scores mean strong negative correlations. The 'arms' spreading out from each dot indicate confidence intervals in our estimates of effect size. (In other words, the true effect size could lie anywhere between the 'stretch' of the two arms.) Where the value of zero falls within the confidence intervals, the relationship is not statistically significant.
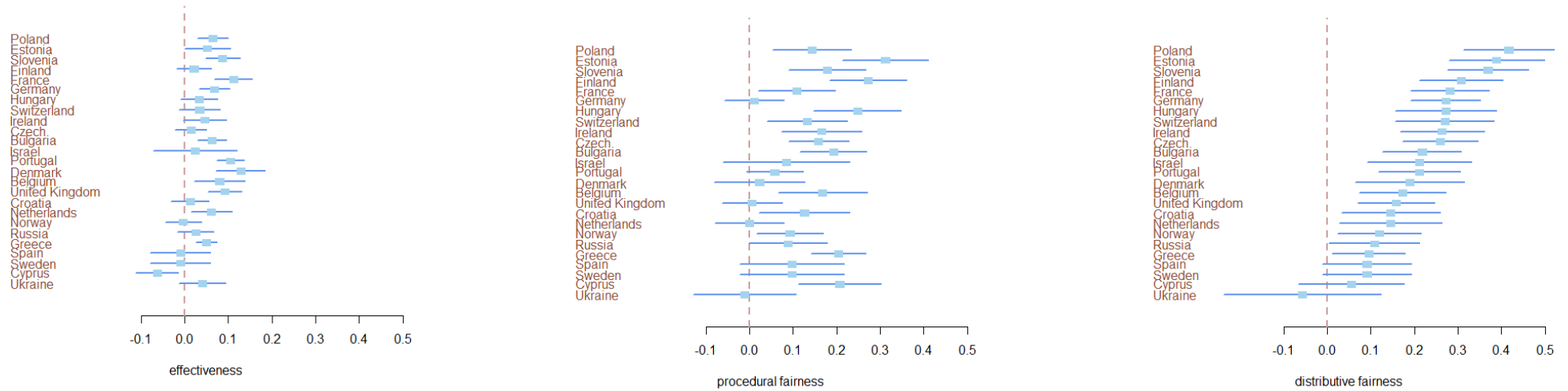
Figure 7   Relationships between forms of trust in the police and perceived obligation to obey
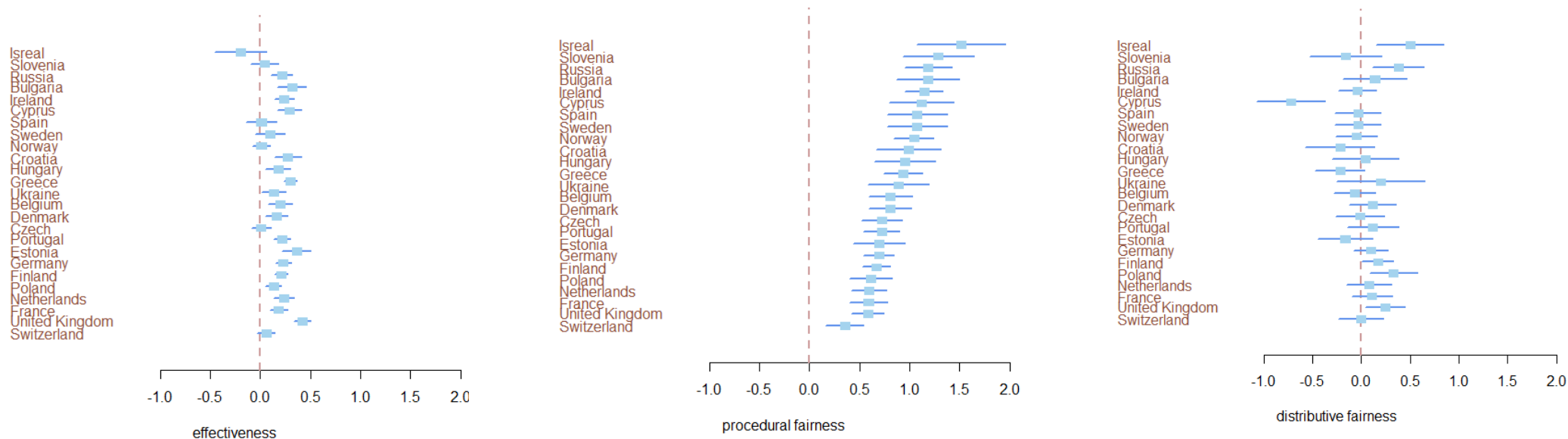
Figure 8   Relationships between forms of trust in the police and perceived moral alignment with the police
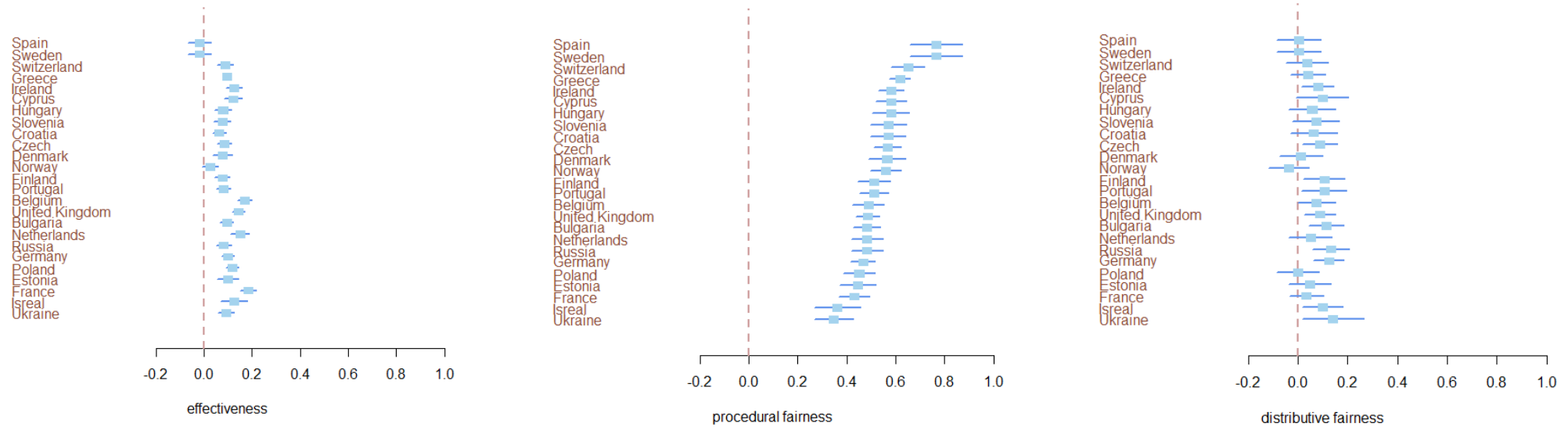
Figure 9   Relationships between forms of trust in the police and perceived legality

Conclusions: implications for European policy

We have demonstrated clearly that there are consistent patterns of relationship across country between dimensions of trust in the police and dimensions of perceived police legitimacy. To distil the findings into a single sentence, trust in the police is an important factor in shaping people's sense of police legitimacy, and trust in police fairness is the crucial dimension across Europe.

Perhaps the first question to ask about the findings relates to their methological robustness. Can a sample survey of this sort really measure such complex psychological constructs as trust in institutions? Can cross-national surveys be designed in a way that permits complex concepts to be measured in different languages across different cultures in ways that are genuinely comparable? (See Hough, 2012, for a fuller discussion.) These are legitimate and important questions to ask about comparative empirical research of this sort. Some of the answers (about measurement equivalence, for example) are empirical one, and we shall turn to this work in due course. We would stress two points, however. First, surveys are crude, reductionist instruments, that draw a simplified version of the complexity of human experience. They are potentially misleading when their findings are used for *post hoc* theorising, as it is all too easy to mistake 'noise' for 'signal', to use the terminology of communications theory. Second, this risk is greatly mitigated when surveys are designed from the start, as our ESS module was, as a means to *test* rather than *construct* theory. We pre-specified the relationships that we thought might exist, and we find it impressive that they emerged largely as predicted despite all the 'noise' that is associated with survey technology.

The findings that we have presented illustrate the variation in trust in the police and the perceived legitimacy of the police across Europe. Some clear patterns emerge: the Nordic countries are most trusting of their police and believe that their institutions are legitimate holders of power and authority; while Eastern and sometimes Southern European countries tend to be less trusting.

The ESS data can be put to many uses.   One specific use is the development of social indicators of public trust and institutional legitimacy (Jackson *et al.* 2011). If they are to devise, track and evaluate effective criminal justice policies, European Union (EU) institutions and Member States need evidence-based indicators of public trust and

institutional legitimacy. Trust and legitimacy indicators are important for (a) better formulation of crime-control policy and (b) more effective monitoring of changes in public trust and institutional legitimacy in response to policy innovation. Measures of trust and legitimacy can be used to inform careful, long-term policies that foster public compliance and cooperation, instead of short-term 'electioneering' strategies that exploit public feelings for political gain, and which are skewed towards short-term crime-control strategies.

The chapter has focussed, however, on the ability of the ESS to test hypotheses. Our analysis remains preliminary, as we have had access to the full dataset for only six months. However, we have established, convincingly we hope, that there is strong empirical support for central aspects of 'procedural justice' theory. The findings presented here show clear and strong relationships between dimensions of trust in the police, and dimensions of perceived police legitimacy. Of particular importance is the strong relationship between trust in fairness and dimensions of perceived legitimacy. The clear policy lesson here is that any strategies to build a sense of police legitimacy in the eyes of the public needs to focus on procedural fairness. Fair and respectful treatment of the public by the police seems likely to be the fastest route to improved legitimacy, from the perspective of the policed.

This chapter has not addressed equally important questions about the relationships between perceived legitimacy and pubic preparedness to cooperate with the police and comply with the law, as reflected in the ESS. Analysis of this is ongoing. However work on a similar UK dataset suggests that the relationships between legitimacy, cooperation and compliance posited by procedural justice theory actually exist (Jackson et al., 2012). People are more likely to comply with the law, and to cooperate with the justice system, when they regard criminal justice institutions as legitimate.

In summary, our ESS analysis is beginning to contribute to a European evidence base that supports procedural justice theory. We have demonstrated that fair and respectful treatment of the police by the public is an essential ingredient in building police legitimacy, and that trust in police effectiveness plays a smaller part. The implications of these findings are clear: in defining 'good policing', the *quality* of relations between police and public may be as or more important than police *competence.* There is always an undercurrent in debates about criminal policy that suggests fairness and due process are constraints on effective crime control, and even that an emphasis on due process is therefore unwelcome. Yet our initial analysis of the ESS suggests quite the reverse. Justice is a precondition for effective crime control across Europe, and that policy-makers and practitioners need to focus on ensuring

that the police and justice system operate in ways that are genuinely fair, just and respectful of people's rights.

References

Becker, H.S. (1963), *Outsiders: Studies in the Sociology of Deviance*. New York: The Free Press.

Beetham, D. (1991), *The Legitimation of Power*. London: Macmillan.

Bottoms, A., and Tankebe, J. (2012), 'Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice', *Journal of Criminal Law and Criminology* 102(1): 119-170.

Bradford, B. (2011), 'Voice Neutrality and Respect: Use of Victim Support Services Procedural Fairness and Confidence in the Criminal Justice System', *Criminology and Criminal Justice*, 11(4): 345-366.

Bradford, B., Jackson, J., and Stanko, E. (2009), 'Contact and Confidence: Revisiting the Impact of Public Encounters with the Police', *Policing and Society*, 19: 20—46.

Cavadino, M. & Dignan, J. (2006), *Penal Systems. A Comparative Approach* London / Thousand Oaks / New Delhi: Sage Publications.

Cavadino, M. and Dignan, J. (2013) *Political economy and legal systems,* in (eds. Body-Gendrot, S., Lévy, R., Hough, M., Snacken, S. and Kerezsi, K. *The Routledge Handbook of European Criminology*. London: Routledge.

Coicaud, J.-M. (2002), *Legitimacy and Politics*. Cambridge: Cambridge University Press.

Easton, D. (1965), *A Framework for Political Analysis*. Englewood Cliffs: Prentice-Hall.

Giddens, A. (1991), *The Consequences of Modernity.* Cambridge: Polity Press.

Gottfredson, M. and Hirschi, T. (1990), *A General Theory of Crime.* Stanford: Stanford University Press.

Hinsch, W. (2008), 'Legitimacy and justice: A conceptual and functional distinction' in Kuhnelt, *J. (ed.) Political Legitimation without Morality*? London: Springer.

Hood, Christopher. (1991), 'A public management for all seasons'*, Public Administration,* 69 (1) : 3-19.

Hough, M (2007) 'Policing, New Public Management and Legitimacy' in Tyler, T.R. (ed.) *Legitimacy and Criminal Justice.* New York: Russell Sage Foundation

Hough, M. (2012) 'Researching trust in the police and trust in justice: A UK perspective', *Policing and Society.*

Hough, M., Jackson, J., Bradford, B., Myhill, A., and Quinton, P. (2010), 'Procedural Justice, Trust and Institutional Legitimacy', *Policing: A Journal of Policy and Practice,* 4/3: 203—210.

Jackson, J., Bradford, B., Hough, M., and Murray, K. H. (2012), 'Compliance with the Law and Policing by Consent: Notes on Police and Legal Legitimacy', in Crawford, A. and Hucklesby, A. (eds.) *Legitimacy and Compliance in Criminal Justice.* London: Routledge.

Jackson, J., Bradford, B., Hough, M., Kuha, J., Stares, S. R., Widdop, S., Fitzgerald, R., Yordanova, M., and Galev, T. (2011), 'Developing European Indicators of Trust in Justice', *European Journal of Criminology*, 8: 267—285.

Jackson, J., Bradford, B., Stanko, E. A., and Hohl, K. (2012), *Just Authority? Trust in the Police in England and Wales*. London: Routledge.

Katz, J. (1988), *Seductions of Crime.* Basic Books.

Lappi-Seppala, T. (2013) *Punitivity and public opinion* in (eds. Body-Gendrot, S., Lévy, R., Hough, M., Snacken, S. and Kerezsi, K. *The Routledge Handbook of European Criminology*. London: Routledge.

Messner, S. & Rosenfeld, R. (2001), An Institutional-Anomie Theory of Crime. In R. Paternoster & R. Bachman (eds.) *Explaining criminals and crime.* Los Angeles: Roxbury.

Messner, S. & Rosenfeld, R. (2010), Institutional-Anomie Theory: A macro-sociological explanation of crime. In A. J. L. Krohn & G. P. Hall (eds.), *Handbook on crime and deviance.* New York: Springer Science=Business Media.

Myhill, A., and Bradford, B. (2011), 'Can Police Enhance Public Confidence by Improving Quality of Service? Results from Two Surveys in England and Wales', *Policing and Society*, iFirst, DOI: 10.1080/10439463.2011.641551

Nelken, D. (2013) *Comparative criminal justice and globalisation: some evidence from Italy.* in (eds. Body-Gendrot, S., Lévy, R., Hough, M., Snacken, S. and Kerezsi, K. *The Routledge Handbook of European Criminology*. London: Routledge.

Reiner, R. (2007), *Law and Order: an honest citizen's guide to crime control.* Cambridge: Polity Press.

Reiner, R. (2010), *The Politics of the Police*. Oxford: Oxford University Press (fourth edition).

Reisig, M. D., Bratton, J., and Gertz, M. G. (2007), 'The Construct Validity and Refinement of Process-based Policing Measures', *Criminal Justice and Behavior*, 34/8: 1005—1028.

Reisig, M. D., and Lloyd, C. (2009), 'Procedural Justice, Police Legitimacy, and Helping the Police Fight Crime: Results from a Survey of Jamaican Adolescents', *Police Quarterly*, 21: 42—62.

Robinson, P. H., and Darley, J. M. (2004), 'Does Criminal Law Deter? A Behavioural Science Investigation', *Oxford Journal of Legal Studies*, 24: 173—205.

Robinson, R. H. and Darley, J. M. (1997), 'The Utility of Desert' *Northwestern University Law Review, Vol. 91:* 453-499.

Sack, F. and Schlepper, C. (2013) *Changing definitions of the criminal law in Germany in late modernity.* in (eds. Body-Gendrot, S., Lévy, R., Hough, M., Snacken, S. and Kerezsi, K. *The Routledge Handbook of European Criminology.* London: Routledge.

Skogan, W. (2006), 'Asymmetry in the Impact of Encounters with the Police', *Policing and Society,* 16: 99—126.

Sternberger, D. (1968), 'Legitimacy' in Sills, D. L., ed., *International Encyclopedia of the Social Sciences* Vol. 9 (p. 244). New York: Macmillan.

Tyler, T. R., and Fagan, J. (2008), 'Legitimacy and Cooperation: Why do People help the Police Fight Crime in their Communities?', *Ohio State Journal of Criminal Law*, 6: 231—275.

Tyler, T. R. (2006a), 'Psychological Perspectives on Legitimacy and Legitimation', *Annual Review of Psychology*, 57: 375—400.

Tyler, T. R. (2006b), *Why People Obey the Law.* Princeton: Princeton University Press.

Tyler, T. R. (2008), 'Psychology and Institutional Design', *Review of Law and Economics*, 4/3: 801—887.

Tyler, T. R., and Blader, S. (2000). *Cooperation in Groups: Procedural Justice, Social Identity, and Behavioral Engagement.* Philadelphia, Pa.: Psychology Press.

Tyler, T. R. (2011a), 'Trust and Legitimacy: Policing in the USA and Europe', *European Journal of Criminology* 8: 254—266.

Tyler, T. R. (2011b), *Why People Cooperate: The Role of Social Motivations.* Princeton: Princeton University Press.

Tyler, T. R., and Blader, S. (2003), 'Procedural Justice, Social Identity, and Cooperative Behavior', *Personality and Social Psychology Review*, 7: 349—361.

Tyler, T. R., and Huo, Y. J. (2002), *Trust in the Law: Encouraging Public Cooperation with the Police and Courts.* New York: Russell-Sage Foundation.

Tyler, T. R., Jackson, J., and Bradford, B. (in press), 'Social Connections and Material Interests: On the Relational Basis of Voluntary Cooperation with Legal Authorities', in Harris, N. (ed.) *Encyclopedia of Criminology and Criminal Justice.* Springer-Verlag.