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**Compliance with the Law and Policing by Consent:  
Notes on Legal Legitimacy and Cynicism**

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**Abstract**

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This article summarises ‘procedural justice’ approaches to policing, contrasting these to the more politically dominant discourse about policing as crime control. It argues that public trust in policing is needed partly because this may result in public cooperation with justice, but more importantly because public trust in justice builds institutional legitimacy and thus public compliance with the law, and commitment to, the rule of law. We define police legitimacy as obligation to obey and moral alignment. We link police legitimacy to legal legitimacy/cynicism, and both to compliance with the law. Some recent survey findings are presented in support of this perspective.

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*Key words: compliance, procedural justice, trust in the police, police legitimacy, legal legitimacy and cynicism*

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## **Introduction**

Ideas ebb and flow. In the 1970s and 1980s, both police leaders and academics routinely appealed to concepts of policing by consent and police legitimacy (c.f. Reiner, 2010). In Britain in the 1990s these ideas were submerged under a wave of crude managerialism from which we are only now emerging (Hough, 2007). Recent years have seen a resurgence of interest in ensuring that the public (a) find the police trustworthy, (b) think the police are a legitimate authority, and (c) believe it is morally just to both obey the law and cooperate with legal institutions.

This chapter analyses key concepts in ‘procedural justice theory’ (Tyler, 2006a, 2006b, 2008; Tyler *et al.*, 2010; Schulhofer *et al.*, 2010), which we hope will prove useful in thinking about the links between crime-control policies and public commitment to the rule of law. Considering the institutional context within which members of the general public comply (or do not comply) with the law, we focus on the distinction between instrumental and normative motivations for compliance (Tyler, 2011). Building upon preliminary analyses of a representative sample survey of England and Wales (Hough *et al.*, 2010), we provide some empirical support for the ideas that we present.

## **Compliance and crime control models**

Penal and criminal policy has always reflected tensions between simple, or even simplistic, models of crime control and ones that have more texture and depth. The key features of the simple ‘crime control’ models are that:

- people are rational-economic calculators in deciding whether to break the law;
- a deterrent threat is the main weapon in the armoury of criminal justice;
- offenders – and thus crime rates – are responsive primarily to the risk of punishment, which can vary on dimensions of certainty, severity and celerity;
- increasing the severity of sentencing, and extending the reach of enforcement strategies, are therefore seen as sensible responses to crime; and,
- offender rights tend to be seen as a constraint on effective crime control.

Questions about why people break the law tend – not inevitably, but because of the political climate in which policy is developed – to yield answers framed within the boundaries of simple crime control models. They also imply approaches to crime control that are designed to secure *instrumental compliance*, where people’s reasons for law-breaking are based on self-interested calculation. Such compliance will be secured by the presence of formal or informal mechanisms of social control and the existence of severe sanctions for wrong-doers (Nagin, 1998; Kahan, 1999).

But deterrence is only a small piece of the puzzle (Pratt *et al.*, 2006; Bottoms, 2001). More subtle models of crime control recognise that formal criminal justice is only one of many systems of social control, most of which have a significant normative dimension. Individuals comply with the law for reasons other than an instrumental calculation of benefits and risks of offending. Most people obey most laws most of the time because it is the ‘right thing to do.’ In this regard, genetics, socialisation, psychological development, moral reasoning, community context, social norms and networks may all help sustain the routine compliance that is ‘ingrained in everyday life’ (Robinson and McNeill, 2008: 436).

In these pages our focus is on the role of institutions in encouraging citizens to believe that it is morally just to obey the law (Tyler, 2006a). Legal legitimacy is the public belief that laws are personally binding and the corresponding moral obligation to abide by the law. When people believe that rules are binding in their ‘existential, present lives’ (Sampson and Bartusch, 1998: 786), they feel a duty to obey the rules put in place by authorities, regardless of the morality of a given act (Kelman and Hamilton, 1989; Tyler, 2006). Granting authorities such as the police and courts legitimacy cedes to authorities the right to define what constitutes proper behaviour. Holding the *system* of rules to be legitimate overrides specific questions concerning the morality of particular rules.

## **Context and moral reasoning**

Many motivations to obey the law may be deeply embedded, even subconscious. But the decision to break the law must always comprise a choice – at some level – on the part of those involved. Locating

individuals in the potentially criminogenic contexts within which they act, Situational Action Theory (SAT, see: Wikström 2004, 2006; Wikstrom *et al.*, 2010) helps us flesh out the way in individual decisions are related to the morally-binding nature of the law. SAT sees intentional criminal acts as a subset of a wider universe of moral rule-breaking acts: 'An act of crime is to intentionally break a prescription for behaviour stated in the law' (Wikström 2006: 2). For a person to commit a crime in a given situation, they must first perceive the criminal act to be an option; then make a judgement about that option; and finally they must choose to act based on that judgement (*ibid.*).

Whether an actor sees crime as an option is central to SAT. If – and only if – he or she perceives committing a crime to be a possibility, then a (moral) judgement is made based on this perception. The possibilities of action are evaluated against moral rules and principles: 'is doing this right or wrong'? If a judgement is made that committing the crime is a desirable option, or morally ambivalent, or simply a 'neutral' act, the individual must finally choose to act. This choice will be influenced by their personal characteristics such as self-control and their general framework of values, as well as external contingencies, such as the level of informal social control evident in the situation, or the probability of getting caught by agents of formal social control.

By influencing the decision-making processes described by Wikström, institutions may be able to secure compliance with the law. Instrumentally-oriented crime-control models would concentrate efforts at the end of the process. Forced compliance and deterrence work to dissuade would-be offenders who have already decided to commit a crime. Social control mechanisms and credible risks of sanction hope to persuade individuals that a criminal act, while otherwise desirable, is not worth the risk. To achieve this, agents of criminal justice must send out strong signals to would-be offenders of strength, effectiveness, force, detection and justice. In short, they should seek to deter those who would otherwise choose to commit a criminal act.

### **Institutional legitimacy and procedural justice**

But a different approach, based on legitimacy and normative rather than instrumental motivation, 'intervenes' earlier in the process. According to procedural justice models of legitimacy and compliance (Tyler, 2008), institutional configurations can influence moral-decision making processes in more socially and economically advantageous ways. When people believe it is morally just to obey the law – that the law has the right to dictate appropriate and personally binding behaviour – then so long as they know that a particular act is illegal, the immorality of the act becomes a given. A different sort of morality 'kicks in.' Believing that it is the right thing to do to respect legal rules closes down the possibility of seeing crime as an option. Inasmuch as such orientations are embedded in the routines of everyday life, one does not need to think about the morality of the specific act or the likelihood of getting caught.

Focusing on the normative dimensions in people's orientation to the law, procedural justice models recognise the interplay between formal and informal systems of social control. Normative compliance with the law occurs when people feel a moral or ethical obligation or commitment. If people willingly offer their obedience to systems of authority that command legitimacy, then questions about the nature of the legitimacy of authority figures (like the police) and the 'drivers' of institutional legitimacy become of central policy importance – and particularly the actions of authorities when these are found to be key influences on perceptions of legitimacy.

A growing body of largely North American research shows that the experience or perception of the procedural fairness of the criminal justice system is associated with higher perceived legitimacy, which in turn is associated with greater public respect for the law and stronger felt obligation to obey the law (Tyler and Huo, 2002; Sunshine & Tyler, 2003; Tyler, 2003; Tyler, 2007). On the basis of various surveys of the public, Tyler and colleagues have demonstrated that public perceptions of the *fairness* of the justice system in the United States are more significant in shaping its legitimacy than perceptions of its *effectiveness*. Existing when the policed regard the authorities as having earned an entitlement to command, legitimacy is formed most importantly via interpersonal interaction, particularly through the experience of procedural justice. An important distinction here is between a sense of justice based on process and one based on outcome. Tyler's findings suggest that procedural justice – that is, fair and respectful treatment that 'follows the rules' – is more important to people than obtaining outcomes that they regard either as fair or favourable to themselves. In

encounters with the police, it is the quality of treatment received that is more important than the objective outcome.

In explaining why the legitimacy of the police shapes compliance, Tyler (2006, 2008) draws upon the work of Kelman and Hamilton (1989). Fundamentally relational, legitimacy is the right to command others, the authorisation of authorities (by subordinates) of the right to dictate appropriate behaviour, and the subsequent obligation to follow those directives or rules. As Kelman and Hamilton (1989: 54-55) put it:

‘A person holds authority only over, or with respect to, another person. Thus, authority refers to a role relationship between two sets of actors within a social unit: the authority holders (or “authorities”) on the one hand and the subordinates or ordinary members on the other ... Since authority is a relationship, the role of each of the two parties is defined with reference to the role of the other: The role of authorities entitles them to make certain demands on citizens, and the role of citizens obligates them to accede to these demands.’

Tyler’s empirical focus is on police legitimacy: focusing on the authority of police officers and its corollary the duty of obey instructions from officers, police legitimacy resides most importantly in the belief that it is (morally) correct in and of itself to obey officers’ instructions. Obviating the need for judgments and choices about the content of those instructions, one follows a police directive whether or not one agrees with it. As Kelman and Hamilton (1989:16) put it: ‘...a different type of morality, linked to the duty to obey superior orders, tends to take over.’ Assuming that police legitimacy translates into legal legitimacy, Tyler links police legitimacy to compliance. People obey laws out of a respect for law and a more general duty to obey legal authorities. Contrasting instrumental and normative models of compliance, Tyler then argues that normative compliance is economically more viable – and is more stable over time – than instrumental compliance, which in the US context at least carries a growingly unaffordable social and fiscal cost.<sup>2</sup>

### **A broader definition of police and legal legitimacy for the British context**

Yet, Murphy *et al.* (2009) call for a differentiation between police legitimacy and legal legitimacy.<sup>3</sup> Tyler’s main focus in US research has been on the interactions between officials and the public, and especially the ways that the behaviour of officials builds or erodes public obligation to obey police officers. The procedural justice model, as defined by Tyler (this volume), positions a perceived duty to obey officers as the core component of police legitimacy (at least as this finds expression in the public mind). If the police powerfully represent the law then the link between obligation to obey the police and obligation to obey the law seems unproblematic. We obey the police because they are a legitimate authority; the police are powerful representatives of the law; so to feel obligation to obey the police is also to feel obligated to obey the law.

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<sup>2</sup> The case for such an approach will be strengthened, of course, as the need to reduce public expenditure becomes ever more pressing in the years ahead.

<sup>3</sup> In a series of three studies, Murphy *et al.* (2009) measured the legitimacy of tax laws (study 1) in terms of the perceived morality of tax dodging (we would call this ‘perceived morality of the offence’); the legitimacy of welfare laws (study 2) in terms of whether individuals questioned the legitimacy of the welfare system, whether the laws were consistent with the views of Australians and whether the system worked well; and moral alignment with the laws that police officers enforce (study 3). They found that for people who questioned the legitimacy of the law, procedural justice (in study 3 this was the belief that the police are trustworthy to be fair and treat individuals with dignity and respect) was a stronger predictor of compliance and cooperation than for those who did not question the legitimacy of the law. People who question the legitimacy of the law may thus be more powerfully affected by the experience of procedural justice because of a greater social distance between such individuals and the authorities who enforce the law (assuming that procedural justice decreases social distance and that people who grant legitimacy to the law feel relatively little social distance to legal authorities). We make a distinction between police and legal legitimacy, but we also treat the morality of specific offences as separate to both forms of legitimacy. We define legal legitimacy as the presence or absence of legal cynicism, i.e. a more general sense that laws are psychologically binding.

Legal legitimacy is the sense that it is morally just to obey law – the belief that laws are binding, irrespective of whether one agrees with their moral content.<sup>4</sup> The absence of legal legitimacy is partly ‘legal cynicism’ (Sampson and Bartusch, 1998), although legal cynicism should not be seen as a void but an active, negative stance toward the law. By exploring empirically the link between police and legal legitimacy, we can begin to tease out the separate roles that each might just play in explaining variation in self-reported compliance (we can also see if they are empirically distinct). Legal legitimacy may explain some of the variation in self-reported compliance because some people are more inclined to respect the rules: they abide by the rules even if they disagree with a specific law. Police legitimacy may explain some of the variation in self-reported compliance because people internalise the values of this highly visible institution of justice.

For some people the ‘police’ and ‘law’ may be so closely aligned that to obey one is necessarily to obey the other. Yet, it seems likely that the link between police and law in Britain is somewhat weaker than might be the case in the US. Indeed, the nature and strength of the police ‘brand’ in Britain may be such that policing can be and often is seen as an end in itself, rather than as simply a component in the process of law. British policing may be as much about the maintenance of order as it has been about enforcing the law. (Reiner 2000; Emsley 1996). A narrowly legalistic approach to policing – concerned, for example, with the rigid application of equal sanctions to equivalent offences – may be actively unpopular among many members of the public, who might prefer to see policing applied in more subtle ways, which reinforce existing social structures and relationships without immediate recourse to the ‘heavy hand of the law’ (Girling *et al.*, 2000; Wells, 2008). The roots of this phenomena can be traced back to the foundational myths of the Metropolitan police (see below), which paint the policeman as a uniformed citizen mediating between people and state, rather than enforcing the will of the state (the law) on the people.

We distinguish in our study between legal and police legitimacy. But we also expand the definition of police legitimacy. According to Beetham (1991) people confer legitimacy on institutions not simply because the latter adhere to standards of good behaviour (that we may extend to acting fairly, which then generates authority), but also because they regard the institutions as representing particular normative and ethical frameworks (see Tankebe, 2010). Conferring legitimacy on an institution is a stance or act based on the expression of shared values – a sense of ‘moral alignment.’ Obligation to obey is not uniquely constitutive of the legitimacy of legal authorities, it is part of a set of ideas, beliefs and behaviours that individuals exhibit in relation to those authorities that combine to establish (or negate) their legitimacy.

Police legitimacy, we propose, flows not simply from factors such as its procedural fairness (and general trust and confidence), nor is it instantiated only in obedience as prerogative. It is also based in public beliefs that the police and the policed share broadly similar moral positions (cf. Tankebe, 2009: 1280-1281). Crucially, people may internalise what they believe are the values and broad moral positions expressed by the police. This sense of shared purpose may be part and parcel of the conferred right of the police to possess the right to govern. To say that legitimacy is both (a) obligation to obey police directives and (b) moral alignment with officers, and by extension the institution as a whole, is not to say that to be considered legitimate, police must enforce laws that all citizens agree with. Instead, by demonstrating ‘moral authority’ (through procedural justice and defending and representing community values) the police can embody in more general terms a shared sense of right and wrong and a commitment to the rule of law. This does not require them to be moralists, or to demonstrate moral superiority. But it does require them to negotiate order in a way that maximises consent.

### **Moral alignment and compliance with the law**

Why, then, might a sense of moral alignment between police and people be an important component of police legitimacy in Britain? One answer lies in the history of policing in the UK, which is quite distinct from that of the US and mainland Europe. Consider Tonry’s (2007: 4) thoughts on why the procedural justice and legitimacy literature developed almost entirely in the US context:

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<sup>4</sup> Low perceived legal legitimacy is a cynicism about the law: a sense that one should does not need to comply with the law simply because *it’s the law*. At its extreme, legal cynicism is active antagonism and personal validation of deviant behaviour (Sampson and Bartusch, 1998).

‘My guess that the answer centers on the United States’ distinctive constitutional scheme premised on notions of limited power of government and entrenched rights of citizens, compared with the étatist traditions of Europe, including Britain and most of the rest of the world. Concepts of vested substantive rights against the state and procedural protections against state intrusion were probably predicates to the development of a theory of procedural justice and a research agenda aiming to understand the effects of alternative ways of implementing procedural protections. This American hegemony will not last because these differences between the United States and Europe are eroding. Within Europe, the application of the European Declaration of Human Rights and the decisions of the European Court of Human Rights are creating stronger substantive rights and procedural protections.’

The Metropolitan Police Force for London was established in 1829 by Robert Peel and it is commonplace to refer to his principles of policing operation, which speak to issues of policing by consent and accountability. While doubts exist as to the primary source (Lentz and Chaires (2007)<sup>5</sup>), the spirit and theme of the principles are important. Phrases like ‘The police are the public and the public are the police’ and ‘The ability of the police to perform their duties is dependent upon public approval of police actions’ (e.g. Reith, 1952: 154) call for a close social connection between what were then ‘subjects of the crown’ and the police. They allude to a belief that the police should be a source of moral authority that stems from being *of the community*, where the community is primarily defined as the imagined (Anderson 1991) community of Great Britain (that is, the nation). Officers typify and symbolically defend the norms and values, not necessarily just of the immediate community but also of the superordinate national community. As time passed, many individuals may have come to accept the influence of the police, in order to maintain a self-defining relationship with this symbol of order and ‘Britishness’ (Loader and Mulcahy, 2003; Jackson and Sunshine, 2007).

In the British context, a history of policing by consent may have left citizens with closer social bonds with the police than in the US, raising the possibility that identification is to some degree based on a sense of shared moral values grounded in the social and cultural significance of the police in Britain (a symbol of order and defender of community values). Demands from authorities may call upon commitments from subordinates that are, in part, related to the relationship that individuals have to the group. Activating a sense that the roles defined by the legitimate power relationship are personally meaningful to the individuals involved, such identification may lead to the internalisation of legitimate authority, an identification with the norms, goals and values of the police that may be constitutive of the legitimacy of the authority (cf. Turner, 2005). Identification with the police may, in other words, depend on the degree of prototypicality of the police (Sunshine and Tyler, 2003a; Jackson and Sunshine, 2007; see also Hains *et al.*, 1997; Hogg, 2001; De Cremer *et al.*, 2010) and on the internalisation of shared moral positions.

This expanded definition of legitimacy suggests that the British police can employ different processes and instruments of influence, depending on the authority relationship that an individual has with the police. If people base the authority relationship on the fear of punishment, then demonstrations of deterrence and power will be most effective. If people base it on compliance with rules, then social influence and demonstrations of authority will be critical. If people base it on common moral values, then demonstrations of shared purpose will be key. And if identification is based upon shared normative and ethical grounds, we can begin to address the familiar issues that surround notions of legitimacy as pure obligation. A legitimacy that suppresses individual’s moral judgement of the character of the police directives flattens normativity, minimising the active role citizens can play in judging those that govern them. Again returning to the terminology of identification or moral alignment, if most people are concerned about justice and morality, then legitimacy is given a sounder normative basis: legitimacy is not just a dull compulsion to obey (Tankebe, 2010).

### **Preliminary analysis of data from a representative sample of England and Wales**

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<sup>5</sup> Lentz and Chaires (2007) suggest that these principles may be somewhat the ‘invention’ of twentieth-century textbooks.

The National Policing Improvement Agency (NPIA) fielded questions on public trust and police legitimacy in a representative sample-survey of England and Wales, allowing us to test a series of hypotheses that link trust in the police, to perceived legitimacy, to self-reported compliance. While many of the elements shown in the models will be familiar from extant studies based on procedural justice theory (Reisig *et al.*, 2007; Sunshine and Tyler, 2003b; Tyler and Fagan, 2008; Tyler and Huo, 2002; Murphy *et al.*, 2009), the concept of legal legitimacy/cynicism is a relatively novel addition to such models (although see Murphy *et al.*, 2009), as is a differentiation between everyday crime and a type of offending that may be particularly calculative – and thus, perhaps, separate from common views of the law.

What follows is an outline of some of the preliminary findings from the NPIA survey (see also Hough *et al.*, 2010; the full findings will be reported in due course).<sup>6</sup> Our data come from face-to-face interviews in respondents' homes using Computer Assisted Personal Interviewing, with a response rate of 62% yielding an analytical sample of 7,434 respondents aged 16 and over (although we draw in this article on data from the sub-sample (n=937) of respondents who were asked the procedural justice questions). Because it is likely that self-report measures of personal morality and compliance behaviour are affected by bias associated with social desirability, we made provision for questions relating to those two concepts to be completed via Computer Assisted Self-Interviewing, where responses are entered directly into the computer (out of sight of the interviewer).

Consider, first, the distinction between instrumental and normative compliance. The instrumental model predicts that people comply with the law because the police present a powerful risk of sanction and punishment. An instrumental route to compliance traces paths from individuals believing that the police are effective in their job (that the police are good at catching criminals, preventing crime, dealing with victims, and so forth) to believing that the risk of getting caught is high (if one were to shoplift, buy stolen goods, vandalise public property, illegally dispose of rubbish, or commit a traffic offence) and from there to complying with the law (the same acts).<sup>7</sup>

Figure 1 summarises the first set of results, which were estimated using structural equation modelling.<sup>8</sup> Police legitimacy is here represented by a single latent variable construct measured by a series of questions about obligation to obey (e.g. agree/disagree: 'You should do what the police tell you, even if you disagree') and a series of questions about moral alignment (e.g. agree/disagree: 'The police in this area usually act in ways that are consistent with my own ideas about what is right and wrong'). While trust in police effectiveness<sup>9</sup> predicts people's perceptions of the risk of being caught (if they were to commit an 'everyday crime'), the perceived risk of sanction is not a significant factor in predicting the odds of falling into the 'occasionally committing a crime' group. The NPIA data do not offer empirical support for a simple deterrence-based model of crime control – at least within the limits of observational data and the modelling of self-reports views, beliefs, calculations and

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<sup>6</sup> See, also, Jackson *et al* (in press) for details of the development of similar measures of trust, legitimacy, compliance and cooperation, this time for a European comparative analysis (fielded in Round 5 of the European Social Survey).

<sup>7</sup> We used latent class analysis to combine answers to these five questions into one dichotomous variable, since the manifest variables were categorical and since we assumed that the underlying latent variable to be categorical. A two-class model was tested using Full Information Maximum Likelihood estimation in LatentGold 4.0 (which includes all available information in the estimation procedure). The model allocated 93% of the sample into class one (very unlikely to report having shoplifted, bought stolen goods, vandalised public property, illegally disposed of rubbish, or committed a traffic offence) and 7% of the sample into class two (likely to admit having occasionally committed one or more of the everyday crimes). A dichotomous variable was then derived that identified the modal category, thus categorising each respondent as either 'compliant' or 'occasionally uncompliant.' The data were then exported to MPlus 5.2 for the proceeding statistical analysis.

<sup>8</sup> Using MPlus 5.2. We should make three technical notes. First, we treated the latent variable indicators as categorical variables. Second, we dichotomised the measures of compliance and personal morality using latent class modelling, before entering the derived variables into subsequent structural equation modelling (the final analysis combines linear and logistic regression). Third, all absent structural paths were not statistically significant.

<sup>9</sup> For thoughts on the meaning and measurement of trust in the police, see Stoutland, 2001; Jackson & Bradford, 2010; and Jackson *et al.*, in press.

behaviours. This combines with prior evidence (Pratt *et al.*, 2006) to suggest that deterrence is not an effective route to securing compliance.

INSERT FIGURE 1 ABOUT HERE

Second, trust in the police is a strong predictor of perceived legitimacy (Figure 1). Combining with a good deal of experimental and observational work (e.g. Tyler and Huo, 2002) this suggests that trust in procedural fairness<sup>6</sup> fosters in people feelings of motive-based trust in (and shared group membership with) the authority concerned – that both it and they are ‘on the same side.’ According to Tyler and Lind’s relational model of procedural justice (Tyler and Lind, 1992), the manner in which people – as members of social groups – are treated by those in authority communicates information to them about their status within those groups.<sup>10</sup> When police provide individuals with appropriate status information (through fair procedures), they are more likely to feel a sense of obligation to the police and an alignment with the ethical and moral framework they believe the police to embody. That is, they are more likely to perceive the police to be legitimate. Third, police legitimacy is a powerful predictor of compliance, even holding constant personal morality (cf. Robinson & Darley, 1995) thus replicating Tyler (2006).

What happens when we disentangle moral alignment and obligation to obey? Recall our earlier distinction between duty to obey and identification with the moral values of officers. Figure 2 summarises the findings of a model that divides moral alignment and obligation. What emerges is, again, striking. While moral alignment is an important predictor of compliance, obligation to obey is not. This does not mean that legitimacy should not include a felt obligation to obey the police. Rather, insofar as legitimacy shapes compliance behaviour, it is the moral alignment and identification that seems to encourage individuals to act in line with the law (crucially, conditioning on their beliefs about the specific morality of the act and the situational dynamics of deterrence and punishment).

INSERT FIGURE 2 ABOUT HERE

Some form of duty to obey may still be important, however. Consider the distinction between obligation to obey police officers and obligation to obey the law itself. Perceived obligation to obey the law may offer a more proximate and more directly measurable path from police legitimacy to compliance with the law. Figure 3 summarises the findings of the model that includes legal legitimacy (using a scale of legal cynicism, e.g. agree/disagree: ‘Laws are made to be broken’ and ‘It’s ok to do anything you want as long as you don’t harm anyone’). We find that legal cynicism, police legitimacy and personal morality each explain variation in compliance.

INSERT FIGURE 3 ABOUT HERE

Tracing paths from left to right, the model suggests that when individuals perceive police to be acting unfairly and unjustly, this will damage their assessment of police legitimacy, which may encourage an impression that their community (or society) lacks moral cohesion, and subsequently damage their sense of obligation towards their society and its rules. Procedurally unfair treatment may foster among those on the receiving end a growing sense of ‘legal cynicism,’ which is the sense that ‘...laws or rules are not considered binding in the existential, present lives of respondents’ and the ‘...ratification of acting in ways that are “outside” of laws and social norms’ (Sampson and Bartusch, 1998: 786). Procedurally unjust behaviour may communicate powerful messages about the behaviour of important group representatives: the extent to which they adhere to the rules laid down for their behaviour.

The police are the most visible agent of social control – the most high-profile institution in a justice system that is empowered to define right and wrong behaviour. If they abuse their powers and wield their authority in unfair ways, this not only damages people’s sense of obligation to obey their directives (their authority in the normal sense of the word); it also affects public perceptions of their moral authority. Because the police are powerfully linked to the law (even if the two are not

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<sup>10</sup> Insert stuff from Different Things, with appropriate references.

synonymous), unfairness may undermine the moral right of the law to dictate appropriate behaviour. Put another way, if the police are seen to act in ways outside of social norms – which dictate that such authorities should treat the people they serve with fairness and dignity – this then generates a powerful cynicism: ‘if the police can behave however they please, and ignore the rules, so can I.’

It seems probable that legal cynicism will arise as a response not simply to *perceived* police failings, or to the failings of individual officers, but to instances (and more likely long series of instances) of institutional indifference, neglect and injustice. Research from the United States consistently finds that legal cynicism is higher in areas that are policed less well – sometimes barely policed at all, in the proper sense of the word – and is highly correlated with neighbourhood structural conditions that would appear to predict negative, neglectful and/or confrontational police behaviours, such as high levels of concentrated poverty and high proportions of young people (Kirk and Papachristos, in press).

To suggest that legal cynicism *causes* non-compliance would, however, be excessive. Legal cynicism, where it exists, is likely to be rather diffuse set of feelings, emotions and oppositional stances that operates at both the individual and collective level. Kirk and Papachristos (*ibid.*) draw on Goffman’s notion of cultural frames to suggest that legal cynicism becomes a way of seeing the world that opens up or broadens the possibility of criminal acts, while in no way determining that they will occur. At the same time, a cultural frame that includes – even revolves around – legal cynicism occludes or precludes other acts, most pertinently in relation to cooperating with legal authorities such as the police. Kirk and Papachristos show that high levels of legal cynicism in an area predict higher murder rates, and suggest this is in part because such cynicism creates a space in which ‘self-help’ violence (Black 1983) is seen as a viable option in response to slights or threats that in other contexts would be solved by recourse to formal agents of social control.

Seen in these terms, legal cynicism may be one mechanism that broadens the range of (criminal) possibilities perceived by individuals in criminogenic situations. Police behaviours that generate legal cynicism may trigger changes in the decision-making processes envisaged by SAT. Conversely, of course, if this is a two way process, and if the experience of procedural fairness (for example) is linked to lower legal cynicism, then a different cultural frame may emerge that shuts down the possibilities for criminal acts, while also opening up the potential for engagement and cooperation with police.

### **The special case of unpopular laws**

While police legitimacy might be linked to greater compliance in the aggregate, what of the special case of laws that are unpopular or, perhaps more importantly, do not attract very widespread censure (at least as it relates to the moral character of the law)? Traffic policing has long been known to be a problematic area for police-public relations (Girling *et al.*, 2000; Wells, 2008). It does not seem too controversial to say that a major reason for this is that many people do not think current road legislation is correctly formulated, that it is over-harshly enforced, and that it does not apply to them and serves as a distraction from the things the police ‘should really be doing.’

The link between morality and law in such cases be severely attenuated. Conversely, the risk of sanction may become a more important predictor of compliance. Testing the model, which is shown in Figure 4. We explore the possibility that the relationship between police legitimacy, legal cynicism and compliance with traffic laws is different to that described in the more general models shown in Figures 1, 2 and 3.<sup>11</sup> Strikingly, the link between legitimacy and compliance is not in evidence, with no significant path running from either aspect of police legitimacy to compliance (net

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<sup>11</sup> McAdams & Nadley (2008: 892-893) argue that traffic laws may have a ‘focal effect’ on coordination that then generates widespread public compliance. Consider a driver approaching a red light. He or she stops not just because of the risk of punishment, the morality of the action, or the legitimacy of the law. He or she stops also because he or she fears an accident would otherwise occur. The presence of a red light means that other drivers will expect he or she will stop. Traffic laws draw collective attention to help individuals coordinate their behaviour. Put another way: ‘...the law can provide a framework for understanding and predicting what others are likely to do. The shadow cast by law in these situations helps people predict not what a court is likely to do (Mnookin & Kornhauser 1979) but rather what other people who are also aware of the law are likely to do.’ (p. 867).

of other predictors in the model). Rather, in this model, compliance is associated with personal morality and to a lesser but still significant extent with perceived risk of sanction. This suggests that people comply with traffic laws most importantly because they think it is wrong to commit traffic offences. They are also more likely to comply when they think they will be caught if they do not (again with the usual caveats about observational data and modelling self-reports).

INSERT FIGURE 4 ABOUT HERE

The lack of a significant association between legal cynicism and compliance is notable. Surely a feeling that ‘laws are made to be broken’ will be linked to a greater propensity to commit traffic violations? This unexpected finding may serve to underline just how differently many people think about traffic compared with other laws. When formulating their answers to the survey questions used to measure legal cynicism, respondents may do so with little notion that traffic offences fall into the general category of ‘the law.’ Equally, traffic offences may be so distant from other laws in peoples’ minds that their responses to them are influenced by institutional context in ways quite different to the general picture (most notably in the current setting by perceptions of the risk of sanction).

### **Instrumental fairness, Human Rights and the legitimacy of the police**

In an over-simplified discourse about crime control, as we see in the UK, the rationale for improving ‘confidence in justice’ is that greater consumer satisfaction on the part of the ‘law-abiding majority’ will secure their cooperation with the authorities. When citizens report crimes, act as witnesses and so forth, this enhances the deterrent effectiveness of the system. By contrast, a procedural justice perspective directs attention to ‘confidence building’ amongst those parts of the population whose commitment to the rule of law is more tentative. The primary purpose is to secure compliance first, and cooperation second. It also alludes to the fact that the ‘law-abiding majority’ also commit crime, and that in any case they too care more about fair procedure than effectiveness narrowly defined. All available evidence suggests that fostering trust and legitimacy via fair and decent treatment would pay dividends across the population.

There is, however, a problem. For all that procedural justice holds out the possibility of achieving two desirable ends at once (a better relationship between police and public based on notions of fairness and greater compliance with the law) it also contains a danger. Compliance might be ‘bought’ by an empty fairness based not on voice, respect and dignity, but implemented in a purely instrumental fashion, intended only to make people *feel* that they have been fairly treated. After all, almost all the evidence we have that procedural justice ‘works’ is based on public perceptions of police and policing, not on objective measures of actual police behaviour. Ultimately, perhaps, the risk is that procedural fairness might be free-floating and cynical: not tied to any ethical or normative principles but channelled by circumstance and exigency, used as a tool by authorities to extract compliance from a systematically misled public.

MacCoun describes this risk as ‘the dark side of procedural justice.’ He suggests that we should extend the analytical focus from the beliefs of citizens to the substance of decision-making, for instance, we might ask ‘[h]ow are procedures selected, how are they represented to citizens, and when are they deployed’ (2005: 193). Here we return to the normative justifiability of power. In an echo of Beetham (1990), Buchanan states that ‘an entity has political legitimacy if and only if it is morally justified in wielding political power’ (2002: 689). Buchanan cites criteria that must be met to claim legitimacy, namely a minimum standard of democracy, adherence to procedural justice and ‘processes, policies, and actions [that] respect the most basic human rights’ (2002: 703). Taking the example of human rights, we can begin to map out how empirical understandings of policing and fairness might be tied to a set of external referents that harness the free-floating aspects of procedural justice theory.

Human rights refer to a fundamental set of rights and freedoms – for example, equality, dignity and respect, which assert the moral value of human life in its own right. In the UK, the Human Rights Act 1998 entrenched the European Convention on Human Rights in domestic law. Whilst all policing in the UK must be undertaken in accordance with the strictures of the HR (as Sanders and Young, 2008: 283 note), the difficulty in applying a human rights framework to policing

is that the formulations are either vague, for example ‘to be treated fairly and without discrimination,’ or conditional. Making the ‘right’ policing choice is further exacerbated by conflicting priorities and objectives that are not equally achievable (ibid.). Indeed it is doubtful that *any* policing principle can entirely escape the difficulties and contestations of applied policing. Rather, the key task is to set out a ‘philosophical standpoint’ (ibid. 284) that is broadly perceived to be legitimate (taking empirical values as our guide). We can use this to inform proportionate policing. In short, we need to establish a moral compass that allows the police to balance means and ends and ‘...do the right things, for the right reasons’ (Neyroud and Beckley [2001: 37], cited in Neyroud, 2008: 669).

For all that the possibility of ‘instrumental fairness’ is, and should be, a concern underlying any efforts toward implementing procedural justice policing policies (policies that, realistically, will be sold to practitioners on the promise they hold regarding fairly instrumental ends in terms of cooperation and compliance), we might take some reassurance from the relevance of Beetham’s notion of legitimacy to policing in the UK. The public can and do make nuanced judgements about the police, how they act, whether they are fair, whether they operate according to a shared moral framework. These are, by and large, congruent with normative conceptions of legitimacy derived by police or legal scholars. Indeed, one the strengths of Beetham’s approach is that it blurs the line between lay and specialist accounts and allows for the fact that ‘ordinary’ people may hold the authorities that govern them to account in similar ways to those developed within the academy.

Equally, just as a Human Rights approach offers procedural justice theory an external normative referent (Murray, 2010), normative conceptions of legitimacy can be used to tie empirical police legitimacy – of the type described above – to standards that derive from moral, legal or political philosophy. To do this, it is necessary to take a step back from Beetham, to draw a distinction between concepts of legitimacy and conceptions of legitimacy (see Hinsch, 2008, for an overview). Concepts of legitimacy tell us what it means to say something is legitimate. Two distinctions are often made. First is the empirical concept of the social sciences. Second is the normative concept of political philosophy. The empirical concept goes back to Weber (1948), for whom legitimacy denoted the approval or sincere recognition of a norm, law or social institution. This is, in essence, the concept we have applied so far in this chapter: the rule of law is legitimate when people see the legal system and authorities as providing an appropriate standard of conduct that must be complied with (crucially, compliance arises not because of external sanctions but because it is seen to be the correct standard). As Hinsch (2008: 40) states: ‘Since no political regime or social order could persist without a fairly high level of unenforced compliance with its rule, the empirical understanding of legitimacy naturally occupies a central place in explanatory theories of social order.’

The empirical understanding of legitimacy raises a set of questions about the ability of a criminal justice system to command legitimacy in the eyes of the public – whether the *policed* see the *police* as legitimate. These questions are open and empirical. Leaving aside whether that system actually meets any given set of objective (or ethical/normative) criteria, they turn our attention to surveys and qualitative methods of research. Such questions give us insight into public attitudes, values, behaviours and beliefs, we can develop a descriptive account of legitimacy. One result of this process is that a system is said to be legitimate when the public grant it legitimacy. An observer sitting outside the system might find a particular arrangement unjust and unacceptable, but they must nevertheless conclude that it is legitimate when those governed believe it to be so. *Under this concept, to say something is legitimate is to make a factual claim about the subjective state of mind of particular individuals that belong to one political society.*

By contrast, within political philosophy, political systems tends to be understood in the normative sense whereby a set of objective criterion are laid out that must be met in order to secure legitimacy, for example, Locke’s treatises on government and writings on Human Rights (1989 [1689]), Rousseau on democracy and democratic approval (1988 [1762]), Bentham’s utilitarianism (1987 [1843]), J.S. Mills on liberty (1998 [1869]), Rawls on justice (2001, 2005) and Miller on social justice (1991). Take for example, the presence of a democratic system of election, adherence by both rulers and the governed to the rule of law and the absence of endemic corruption. Experts can, for instance, judge the Zimbabwean justice system to lack legitimacy, since by any objective standard it is corrupt and lacks public accountability. Assessments of this sort also involve subjective judgements, of course, about the nature of the ‘good or just society.’ Intriguingly, it is possible to have a system of governance that commands high levels of perceived legitimacy from the governed

whilst also, paradoxically, failing to meet the criteria of legitimacy that political philosophers would generally accept. Examples are to be found in many totalitarian and revolutionary regimes in their early phases.

A normative concept of legitimacy sets out 'objective' criteria, according to which an authority or institution is legitimate, not because of the subjective state of mind of those it governs, but because the arrangement meets certain substantive requirements (usually requirements of justice and rationality). In addition, any normative conception of legitimacy has to describe why meeting these criteria confers authority on norms, institutions, or persons. Why do the criteria generate morally binding rules? Empirical legitimacy means stating that people believe an arrangement to be right and just. *Normative legitimacy means substantive recognition that the truth (or validity) of these arrangements is right and just.*

In sum, application of the Human Rights framework to procedural justice theory can be seen as a special case of a more general process through which empirical understandings of public attitudes and orientations toward the police are held up against normative conceptions of what policing is and should be about. As suggested by the brief discussion of Beetham's notion of legitimacy above, there may often be considerable overlap between the two. We should not assume public notions of fairness, trust and morality to be deficient when compared with allegedly more 'sophisticated' viewpoints. But without recourse to normative accounts developed separately to lay understandings our models of legitimacy and compliance will remain both free-floating – tied simply to perceptions – and at least implicitly goal-directed. That is, we risk compliance *as an outcome* becoming the only real goal, whereas what should be at stake is the mutually reinforcing development of public compliance in conjunction with equally desirable developments in police practice that are, in many respects, ends in themselves.

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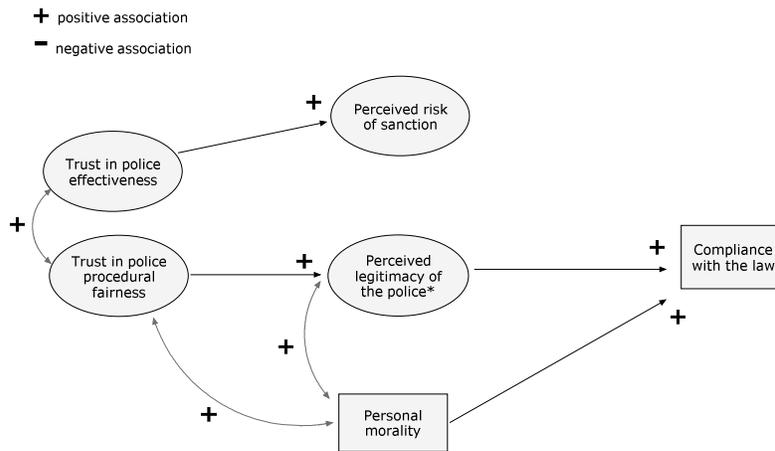
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## Figures

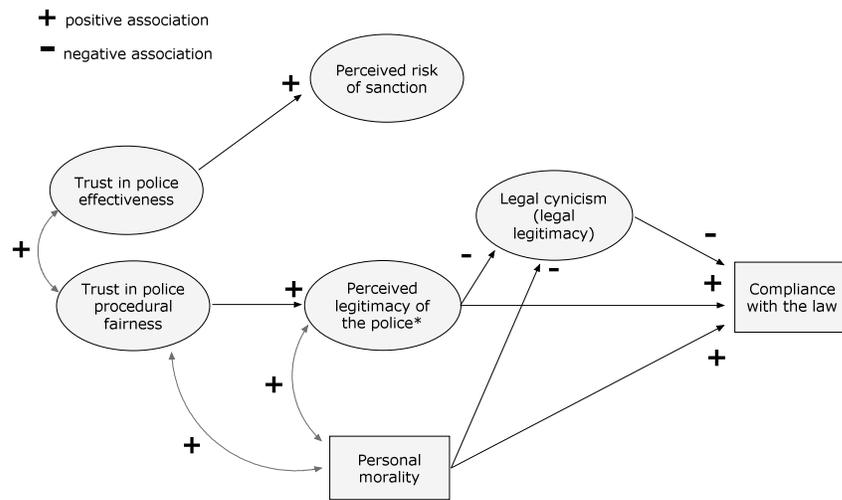
Figure 1: A procedural justice model of compliance



\* Measured by asking about both moral alignment and obligation to obey

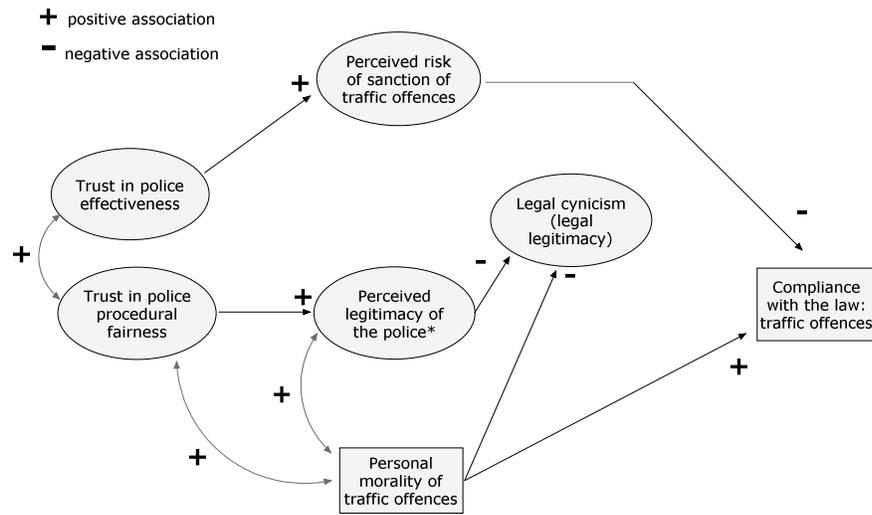


Figure 3: Introducing legal cynicism into the model



\* Measured by asking about both moral alignment and obligation to obey

Figure 4: The special case of traffic offences



\* Measured by asking about both moral alignment and obligation to obey