1. Psychology and the deterrence of corporate crime

*Tom R. Tyler**

1. INTRODUCTION

The field of economics has had an enormous and positive influence upon legal scholarship. This influence has occurred in two stages. In the first, the theoretical framework of rational choice shaped arguments about how to structure regulation and has led to the widespread adoption of deterrence models as a primary mechanism for shaping the behavior of people within work organizations (Arlen and Kraakman, 1997; Becker, 1968; Polinsky and Shavell, 2000). In the second, behavioral economics has more recently provided evidence that the assumptions of the rational choice model need to be modified to recognize that decision making exhibits systematic biases. Both of these movements share the important argument that the design of laws and legal institutions should be shaped by their presumed or observed impact upon the behavior of people. And both begin with the assumption that it is the risk and experience of sanctions that are the key to that influence.

This chapter argues that policy should be based on a broader model than is often employed in economic analyses. The goal of this review is to improve our understanding of the antecedents of law-related behavior. In particular, in this chapter I argue that there is considerable empirical evidence demonstrating that consent-based models of compliance are also viable mechanisms for deterring misconduct in corporate and other work settings. What is a consent-based model? It is a model that focuses on the legitimacy of the law as a factor motivating compliance (Tyler, 2006a, 2006b). If people believe that legal authority is legitimate they consent to and voluntarily comply with legal rules and the decisions of legal authorities.

Sanctions are clearly also important, but given that consent-based models are equally, or in some situations even more, effective it makes sense to move toward a strategy that pays more equal attention to both approaches, which given the current dominance of coercive models means paying greater attention to consensual approaches.

More specifically research findings suggest that consensual models are not only as or more effective than are traditional coercion-based models directed at motivating compliance through a sanctioning approach, but that they are much better able to encourage voluntary cooperation with the rules, lessening the difficulties and costs associated with creating and maintaining the type of effective mechanisms of surveillance needed for sanction-based models. Finally, consent-based approaches encourage employee identification with organizations and communities, which broadly encourages employees' engagement in their work organization (Tyler and Blader, 2005; Tyler and Jackson, 2014). This promotes productivity for companies.

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I further suggest that in spite of empirical evidence demonstrating the important distinct influence of consensual models, coercive models continue to dominate both law in general and the area of corporate compliance in particular. This leads to the question of why that dominance continues in spite of the evidence. This chapter addresses this issue by examining the psychological benefits of adopting an approach based upon coercion to the authorities who enact this approach to regulation.

2. INTERNAL AND EXTERNAL REGULATION

In discussing corporate crime, it is important to recognize that there are two potentially important regulatory models: coercive and consensual. The coercive model is associated with deterrence strategies; the consensual model with the legitimacy of rules and authorities. Most of the general literature on deterrence is concerned with the influence of law and legal authorities upon the behavior of individuals within organizations. People are assumed to be influenced by the penalties of the law; they are also influenced by the legitimacy of law and legal authorities. In the case of the organizations for which people work, there is also an internal regulatory system in which the organization confers rewards and punishments and has its own value-based culture. Hence, the setting of corporate crime occurs within two organizational frameworks, each with coercive and consensual elements. The internal coercive approach, in which firms structure their internal incentives and sanctions to motivate desired behavior is outlined by Arlen and Kraakman (1997).

2.1 Regulatory Goals

In order to compare models of regulation it is first important to identify the goals we seek to achieve through the regulation of organizations.¹ Most discussions focus on the criteria of compliance, i.e. on whether people obey rules and the directives of legal and managerial authorities. These authorities can be legal authorities, such as police officers, judges or administrative regulators who are enforcing societal laws, or corporate leaders, who are enforcing the internal rules of their organizational entities. In either case discussions of compliance focus on observed behavior. The issue is whether and why people do or do not behave in accordance with informal or formal rules. Observed compliance does not in and of itself indicate why people are complying. However, in the everyday use of that term there is often an implicit assumption that compliance is linked to cost–benefit calculations. People comply to avoid sanctions. This is the coercive model.

The goal of this chapter is to separate the issue of the extent and nature of the type of behavior we want people to engage in from the motivations that people have for behaving as they do. There are several goals besides compliance with what might be desirable (Soltes, 2016). The first is the goal of deference. In contrast to compliance, deference

¹ The focus of this discussion is on for-profit work organizations. The arguments being made apply more broadly to people's relationships to any group, organization, or community. Within for-profit work organizations one issue is the internal culture of the firm. A second issue is the framework of legal authority within which the organization functions. Either of these can be coercive or consensual.

is rule-governed behavior that occurs because people have decided that they ought to accept rules and as a result do so without reference to the issue of sanctions. Deference is voluntary in that it is not linked to perceived risk of sanctioning. People consent to rules. As this distinction suggests, there is no necessary behavioral difference between compliance and deference. The difference lies in the motive for rule following. The question is not whether people are following rules, but why they are doing so.²

2.2 Goals for the Behavior of People in Organizations and Communities

The distinction between the two different reasons for following rules has important implications for discussions about regulation. To the degree that rule following is voluntary then regulatory authorities either within a company or in external legal regulatory spheres do not need to expend resources toward the goal of creating viable surveillance systems, building policing forces, and developing ways to judge and punish suspected rule breakers. These resources are less needed because people are internally motivated to conform to rules. Hence, to the degree that it is possible to encourage people to consent to obeying rules, there are clear benefits to organizations and to society.

In both cases, however, the focus is on rule following. For this reason, regulatory authorities are typically viewed as a cost to an organization or a community. Money spent to enforce rules is a necessary cost, but one that reduces the gains that are the goal of for-profit organizations and takes a toll on the efforts to garner resources to promote economic and social welfare that define communities. Armies, police forces and compliance officers are needed to ensure that illegal and unethical behavior does not occur and undermine company or societal viability by leading to either internal conflict or attracting the attention of external government authorities. But these security expenditures do not directly contribute to achieving the goal of enhancing profitability.³ Both companies and communities would benefit if they could allocate more of the resources they use to create credible mechanisms for deterrence to other activities.

A further goal for an organization is to build the type of employee identification with the organization that promotes voluntary behaviors of a positive type, i.e. behavior that is designed to enhance company success and profitability by motivating its members to want to do the things that will lead to the well-being of the organization, i.e. to work productively and engage in desirable in-role and extra-role behavior. An ideal regulatory framework for rule enforcement would leverage employee loyalty toward behaviors beyond rule following and toward enhancing organizational viability and success (see Arlen and

² The distinction between compliance and deference is not absolute. Corporations can create cultures that favor or disfavor deference. The motivation to defer can be enhanced by structures (Arlen, 2012). For example, a company that links employment to achieving profit-related goals is less likely to have a culture that supports discretion about whether to follow rules.

³ One way that they do contribute is by promoting the belief that those who do not follow rules will be caught and punished. Without some level of deterrence people are more likely to be free riders. Believing that the people who break rules are caught and punished is one element in viewing authorities as legitimate. An authority that allows widespread cheating or corruption is viewed as less legitimate and is less able to motivate voluntary deference among the general population of an organization or a community.

Kraakman, 1997; Arlen, 2012). As an example, police forces enforce rules and protect communities from crime. But the type of community solidarity and social capital needed for economic and social development flows from reassurance, i.e. the belief that the police are concerned about the needs of the community and will help those in need. So, beyond controlling crime the police can be a presence that promotes community well-being. Similarly, organizational authorities, for example management, can hopefully promote identification with and commitment to the organization, thereby leading employees to work more willingly and creatively to help their company be successful (Tyler and Blader, 2000).⁴ Studies in both arenas suggest that exercising authority using fair procedures is a key antecedent to creating this view (Tyler, 2006a, 2006b).

These distinctions can be illustrated using recent research on legal authority in communities (Tyler and Jackson, 2014). Consistent with past research, Tyler and Jackson show that risk estimates concerning the likelihood of being caught and punished have an influence on compliance. They also have an influence on voluntary deference, but that influence is weaker. But they do not shape residents' proactive engagement in the community. Across these three forms of behavior the strength of deterrence effects diminishes as the focus moves from compliance, through deference toward positive engagement. Hence, as we move our attention toward building engagement, which promotes the well-being of the community, we increasingly need an alternative model to the coercive approach.

This argument fits well with our goals in community settings, where economic and social development is a key to the future viability of the community. When the police provide reassurance and create legitimacy, rather than creating fear because they are viewed as linked to deterrence, they create a framework within which people engage themselves in the community. This does not mean that deterrence is not valuable, but it suggests the need to pursue legitimacy as a distinctly valuable goal.⁵ It can both help to motivate compliance and can distinctively promote deference and engagement.

The same argument underlies regulation in corporate settings. Too often the compliance officer is just that and employees experience a sanction orientation backed up by many overt and covert forms of surveillance. That can include the monitoring of communications, video surveillance of the workplace, etc. While necessary for a viable command and control regime which functions through deterrence, these actions do not create identification with the company or motivate employees to work on its behalf. To gain the benefits of such motivation people need to experience rules as a product of consent and they need to regard regulatory authorities as legitimate. Compliance officers can also pursue this objective and can work to create a corporate culture that enhances the legitimacy of internal standards and values. The literature that studies policing in community settings suggests that such legitimacy can be created and maintained, and that

⁴ Of course this can be a double edged sword. If people are motivated to achieve success by disregarding rules this success can come at the expense of other values. In an ideal world the corporate culture emphasizes taking actions within the framework of organizational rules as well as rules of law.

⁵ Some scholars argue that pursuing the goal of compliance via deterrence lessens or crowds out the influence of legitimacy on behavior (see Tyler, Goff and MacCoun, 2015 for a review of this argument). This discussion will treat deterrence and legitimacy as two parallel influences on law-related behavior.

it can promote identification and actions on behalf of collective entities. This approach is also viable in corporate settings (Tyler, 2005; Tyler and Blader, 2000, 2005).

3. HOW TO ACHIEVE THESE GOALS

3.1 Deterrence Through External Sanctions

Recent empirical research suggests that the deterrence-based strategies of governance/management can be successful. For example, recent research suggests that deterrence strategies can shape crime-related behavior (Blumstein, Cohen, and Nagin, 1978; Nagin, 1998). But the same findings also suggest that the magnitude of deterrence influences is usually small and sometimes non-existent (Bottoms and Von Hirsch, 2010; Paternoster, 2006).

Further, studies suggest that the limits of deterrence effects do not reflect an inherent inability of using a risk of sanctions to shape behavior. Rather they reflect limits in resources available for surveillance and sanctioning, and situational factors which shape how effective surveillance can be. It is important to distinguish the questions of whether deterrence can work and how well it works in natural situations. Clearly it can and does work in some settings. Limits to how well it works in natural settings are linked to the realities of those situations.

Studies of police presence, for example, link the level of policing to the violent crime rate (Evans and Owens, 2007; Vollaard and Hamed, 2012), with Worrall and Kovandzic suggesting “a modest inverse association between police levels and crime” (2010, p. 515). That association may be strengthened when police can be concentrated in a small area, as in hot spots policing (Weisburd and Braga, 2006). The problem is maintaining high levels of concentrated police attention on one area over time (a resource limit, not an inability of risk to shape behavior).

The use of power, particularly coercive power, is found in many natural settings to require a large expenditure of resources to exert a small influence on others. This conclusion is typical of the findings of studies of compliance with the law in which deterrence is found to have, at best, a small influence on people’s behavior when we consider the proportion of the variance explained by estimates of the likelihood of being caught and punished for wrongdoing. Of course, in corporate settings firms can be encouraged to undertake this monitoring, not government. Nonetheless, whoever is responsible, the resources required to achieve the necessary threats of detection are considerable, so both firms and government would benefit from considering the possibility of other mechanisms for leveraging desirable behavior as well as threatened or enacted sanctions. When possible it would be desirable to restrict the focus of sanctions.

More general reviews of deterrence research which usually focus on crime outside corporations conclude that the relationship between risk judgments and crime is “modest to negligible” (Pratt et al., 2008) and that the “perceived certainty [of punishment] plays virtually no role in explaining deviant/criminal conduct” (Paternoster, 1987, p. 191). According to Piquero, Paternoster, Pogarsky, and Laughran, a review of the literature results in “some studies finding that punishment weakens compliance, some finding that sanctions have no effect on compliance, and some finding that the effect of sanctions

depends on moderating factors” (Piquero et al., 2011, p. 335). This argument heightens the suggestion that sanctions need to be focused, since in some populations they can crowd out other motivations for accepting and following rules, while in others those other motivations are weak or nonexistent and a deterrence threat provides a reason for compliance.

Similarly, studies of more severe punishments, like imprisonment, report that more severe punishments are generally unrelated to lower rates of future criminality (Lipsey and Cullen, 2007). For example, studies on the most severe form of punishment—the death penalty—suggest that the argument that capital punishment deters crime “still lacks clear proof” because studies have failed to produce compelling evidence that executions influence the rate of crime (Weisberg, 2005; *Deterrence and the Death Penalty*, 2012). Studies generally find that the linkage between severity of punishment and criminal behavior is weak. The “evidence suggests that the magnitude of deterrence is not large and is likely to be smaller than the magnitude of deterrence induced by changes in the certainty of capture” (Chalfin and McCrary, 2014, p. 26). Of course, the types of crime involved in these studies differ significantly from corporate crimes and the types of criminals are unlike those associated with “white-collar” crimes, which are economically motivated.

Studies on punishment suggest that it is not only an ineffective deterrent in terms of the general deterrence impact upon society at large (others see the punishment and to avoid it do not commit the crime), but it is also minimally, if at all, effective in deterring the future criminal conduct of those being punished (as is evidenced by high rates of recidivism). Widespread punishment for minor crimes does not generally lower the rate of subsequent criminal behavior, as models of specific deterrence would predict (Harcourt, 2001; Harcourt and Ludwig, 2006). In fact, studies of juveniles suggest that incarceration actually increases the likelihood of later criminality (McCord, Widom, and Crowell, 2001). Hence, the primary impact of punishment occurs through incapacitation, with criminals unable to commit further crimes while they are in prison. Incapacitation works, but is limited in situations where a criminal is replaced by another person committing the same crime (e.g. a new corner drug dealer) and is unnecessary when it is responding to a crime risk that would disappear as a criminal naturally aged out of criminal behavior.

While the previously mentioned studies refer to the effectiveness of deterrence and sanctioning generally, studies specifically focused on white-collar crime yield similar results (Huselid, 1995; Jenkins, Mitra, Gupta, and Shaw, 1998). Braithwaite and Makkai (1991) studied compliance with regulations against fraud among nursing home executives. They concluded that there were no significant deterrence effects; in other words, whether the law was followed was not related to perceptions of the likelihood of being caught and punished for breaking the law.

Additional evidence comes from experiments in which participants indicate their likelihood of engaging in wrongdoing given different fact scenarios that vary the likelihood of being caught. They similarly do not find deterrence effects on people’s decisions about how to act under different conditions (Jesilow, Geis, and O’Brien, 1985, 1986). On the other hand Simpson et al. (2013) argue, based upon studies using simulated scenarios and decisions made by managers, that the “certainty and severity of informal discovery by significant others in the firm” (p. 232) shapes intentions to participate in illegal behavior.

Reviewing these studies Simpson described evidence supporting the existence of deterrent effects in corporate settings as “equivocal” (Simpson, 2002). Most recently Simpson, Rorie, Alper, and Schell-Busey (2014) reviewed the literature on corporate crime

deterrence and concluded that there is some weak but inconsistent evidence, with clear methodological problems, that laws deter corporate crime; that “few significant effects” (p. 38) connect punitive sanctions to deterrent effects; and that individual data is more likely to show the effects of regulatory policy—but these are not found at the organizational level. Interestingly they found that older less rigorous studies were more likely to suggest stronger deterrence effects. Yaeger (2016) similarly suggests that “the jury remains out as to just how much deterrence the law actually brings” (p. 20) (also see Alexander and Cohen, 2011; Ugrin and Odom, 2010). Overall, studies generally find deterrence effects, but the magnitude is often small and dependent upon particular situational factors such as the possibility of detecting illegal behavior.

In addition to this general effect of the law upon behavior there is the influence of deterrence from within the firm. In three studies on cooperation and employee conduct, I interviewed employees concerning their rule-breaking behaviors and their estimates of the likelihood of being caught and punished by their own management for wrongdoing, and examined the influence of employees’ judgments of risk of detection and punishment (Tyler, 2011; Tyler and Blader, 2005). The studies found minimal deterrence effects of internal sanctions on employees’ rule-following behavior (Tyler, 2011; Tyler and Blader, 2000, 2005).

These findings generally point to two conclusions. First, deterrence is effective but expensive. Whenever possible it makes sense to try to focus deterrence upon particular situations or people that are high risk. Second, there are considerable advantages to combining deterrence approaches with efforts to build normative commitments to rule following, both within internal corporate cultures and in relationship to the law. These mechanisms can supplement deterrence mechanisms, and their combined impact is more effective in ensuring successful regulation.

3.2 Internal Incentives: Punishments and Rewards

In addition to punishment, researchers have also considered the role of internal incentives in organizational contexts (Tyler and Blader, 2005). Based upon a workplace-based study in which employees were interviewed about the risk of punishment and possibilities of reward for different types of workplace behavior, Tyler and Blader estimated that around 10 percent of the variance in employee behavior is shaped by incentives in the work environment (Tyler and Blader, 2000; see Podsakoff et al., 2006). These results suggest that, while they are somewhat effective, incentive systems also only have a limited impact on employee behavior.

In recent years, the limits of the reward and sanction-based command and control model has been emphasized in work settings. These critiques focus on systems which seek to implement regulations through sanctions and incentives (Katyal, 1997; Markell, 2000; Sutinen and Kuperan, 1999). In the legal literature on government regulation, skepticism surrounding command and control strategies has led to the flourishing of market-based models of regulation that emphasize economic incentive systems.

The same research shows that changes in behavior motivated by promised incentives or threatened sanctions internal to the organization come at high material costs to the organization because they require either the provision of resources for surveillance or the widespread use of incentives. This leaves organizations vulnerable, because disruptions in

the control of resources brought on by periods of scarcity or conflict quickly lead to the collapse of effective social order when that social order is primarily being enforced through coercion (Tyler, 2006a, 2006b). In the case of firms it applies to business downturns or crises such as scandals or episodes that undermine corporate leadership. This includes internal relationships between leaders and employees; external relationships between a company and its customers; and the balance between internal regulation and government control. When law and legal authorities and/or corporate leadership are seen as legitimate there is an alternative basis for support during difficult times. It is precisely in times of economic crisis that authorities both most need the support of those they seek to regulate and are least able to either provide incentives or effectively enforce sanctions. It is also when business leaders rely most strongly on the loyalty of customers and the confidence of government that they will manage internal crises and do not need external control.

Further, when legal authorities can call upon the consent of the regulated group to encourage desired behavior, either because of an internal ethical culture or because of the legitimacy of legal authorities in a community, the authorities have more flexibility in how they deploy their resources. In particular, they are better able to use collective resources to benefit the long-term interests of the organization since they are not immediately required to ensure that ethical standards and policy objectives are being pursued.

While it may be necessary to have a compliance officer, a police force or an army, viability is enhanced when those resources can be diverted into the development of the organization itself. So, to the degree that order flows from consent, linked to either a shared internal commitment to organizational values or to the law and the legitimacy of legal authorities, society is better off.

The argument made here about the limits of sanctions and punishment might initially seem counterintuitive. After all, most people are familiar with many studies whose conclusion is that “deterrence” or “punishment” works. It is first important to note therefore that some of the seeming impact of deterrence is the manner in which research is conducted and presented. In particular, the use of statistical tests that examine significant departures from ‘no influence’ does not focus on how strong an influence that occurs is, only that it is significantly different from no influence. With a large sample an effect can be statistically significant but substantively unimportant.

An alternative approach is to ask how much of the variance in a particular behavior a model explains. As an example, MacCoun reviewed the literature on deterrence in the case of drug use and suggested that only about 5 percent of the variance in drug use was explained by variations in the certainty and severity of punishment (MacCoun, 1993).

Compare the message of a statistical significance approach with that of a percentage of variance explained model. Even when there are statistically significant effects deterrence explains at best a very small proportion of the variance in law-related behavior. In other words, a relationship between two variables can be found to be statistically significant but can nonetheless explain so little of the variance that it is of barely any consequence.

3.3 Why Do Threatened Sanctions Have Limited Effect?

In addition to resource concerns, there are social costs to an organization that relies on punishment to deter non-compliance. First, if people comply with the law only in response to coercive power, they will be less likely to obey the law in the future because

acting in response to external pressures diminishes internal motivations to engage in socially desirable behavior (Tyler and Blader, 2000). This follows from the well-known distinction in social psychology between intrinsic and extrinsic motivation.

Research on intrinsic versus extrinsic motivation shows that when people are motivated solely by the prospect of obtaining external rewards and punishments (i.e., extrinsic motivation), they become less likely to perform the desired behavior in the absence of these environmental reinforcements (Deci and Ryan, 1985; Ryan and Deci, 2000). On the other hand, if people are motivated by intrinsic reasons for behaving in a certain way, then their compliance becomes much more reliable and less context-dependent (Frey, 1994, 1997a, 1997b).

As has been noted, the idea of crowding out or undermining intrinsic motivation (Frey, 1997b) is particularly important in work settings. Most people have norms and values that encourage them to obey rules and not be unethical or dishonest. These include moral values, social norms and feelings of responsibility and obligation to follow both organizational rules and laws. Further, the type of identification that can develop and facilitate behavior based upon a social connection has the possibility to be especially strong with a work organization, which is often a more cohesive social unit than a community of people who are frequently virtual strangers to one another. Hence, crowding out intrinsic motivations is an especially unfortunate development in work settings.

Further the use of sanctions undermines value-based motivations because it sends a message to the potential targets of the sanctions telling them that the authorities view them as untrustworthy and suspect (Tyler, Jackson, and Mentovich, 2015). As a result, people become more suspicious and less trusting of the law and legal authorities. No one likes to feel that their superiors mistrust them and believe that they must be constantly watched or they might behave unethically. And in modern work organizations such surveillance can be quite pervasive. As has been noted, employees can have their computer hard drives periodically checked; their emails scrutinized; their work space scanned by video cameras and even their bathroom breaks subject to monitoring.

Surveillance is a particular issue with the internal cultures of organizations. If a company communicates an atmosphere of monitoring that leads to sanctioning, it is communicating mistrust, which undermines both employees' identification with the company and their willingness to consent to and voluntarily observe workplace rules (Tyler and Blader, 2005). Of course, this argument should not be extended too far. Companies need to make clear that they do not advocate or condone wrongdoing, and that they will punish it. This can best be communicated within the framework of a positive message about the type of people that the company believes that its employees are, and the type of behavior that it therefore expects from them.

Again, the workplace is a particularly poor setting for using a strategy that is communicating mistrust. Even in high-crime neighborhoods in poor communities, most of the people in the community are not engaged in wrongdoing. Stigmatizing people in these communities is counterproductive because their cooperation is needed to identify the small group of violent criminals within their community. Similarly, stigmatizing large minority populations of Muslim Americans is counterproductive because their cooperation is needed to identify potential terror threats (Tyler, Schulhofer, and Huq, 2010). In work settings the number of individuals engaged in wrongdoing is similarly likely to be small, and their co-workers are the people most likely to be aware of their behavior. Hence,

in all these situations it is advantageous to communicate support and trust as widely as possible.

3.4 The Importance of Resources

This is not to say, as has been noted, that deterrence is irrelevant. Deterrence effects do occur and their limits are not intrinsic to any inability of risk to shape behavior, i.e. they are linked to situational limits. Research only examines the influence of the limited range of sanctions typically found within companies (Paternoster, 1987, 1989, 2006; Paternoster and Simpson, 1996), and does not explore whether the use of greater resources would lead to stronger effects.⁶ Conversely, we do not know how much illegal behavior would occur if employees believed that they could commit fraud or engage in other forms of illegal behavior with no risk whatsoever of being caught and punished. We generally do not know how effective deterrence could be if more or fewer resources were devoted to creating higher levels of risk.

It is particularly important to note that sanctions are often ineffective because society does not put sufficient resources into surveillance and enforcement to make the risks of rule-breaking credible (Paternoster, 2006). If sufficient resources were allocated to that purpose, sanctions might more strongly influence behavior (Paternoster, 2006). The limit of such strategies is defined by resource constraints, since the resources used for surveillance only benefit a company by preventing wrongdoing, they do not contribute directly to productivity. There is an inherent trade-off between resources for surveillance and resources for other purposes.

3.5 Effective Strategies

Overall there is considerable evidence that deterrence can shape behavior. This is especially true of variations in the probability of detection and punishment; and effects are typically stronger at the organizational level (Short and Toffel, 2010). However, findings equally clearly suggest that the strength of such effects is often overstated and that regulation would clearly benefit from a greater inclusion of attention to voluntary cooperation based upon consent.

Research findings therefore suggest the value of a two-part strategy. The first part involves optimizing deterrence by identifying those situations within which deterrence can be effective and sustainable. This requires an ability and willingness to create and maintain a credible threat of punishment. It also works best when behavior is observable and difficult to conceal. In such settings a deterrence model is most likely to be effective. And, in any setting deterrence is a background factor of importance. If the government had no policing for legality, for example, this would encourage greater levels of rule

⁶ It is particularly noteworthy that students of perceptions of risk find evidence of threshold effects. It may be necessary for the likelihood of being caught to be over some level, a level often suggested to be around 30 percent, before there is any strong deterrence influence. There are very few crimes in our society (e.g. murder) that have arrest rates above this level. For example, drug use, which is a crime against which a considerable number of police resources are directed has a much lower level of risk (MacCoun, 1993).

breaking. Hence, a starting point of any approach to regulation is deterrence. However, the findings also suggest that deterrence can only be a beginning point. It is important to seek to supplement deterrence mechanisms with other approaches that create and draw upon values which motivate cooperation with law and legal authorities.

4. CONSENT-BASED REGULATION

The coercive model can be contrasted to a second motivational model: consent-based deference. This model encourages people to accept rules and obey them because they believe they define the appropriate behavior to engage in. People consent when/to the extent that they believe that authority is legitimate and ought to be obeyed; that authorities can be trusted to create desirable rules which reflect shared values; that the rules reflect personal moral values defining right and wrong; and/or that the rules reflect shared norms about desirable behavior in the community (Tyler and Darley, 2000; Tyler and Huo, 2002). These factors can work together and, research shows, any of them can distinctly shape rule following. Of particular importance is legitimacy, the focus of this chapter.

4.1 Evidence on the Effectiveness of Consent-Based Approaches

In the case of legal authorities, a large number of empirical studies indicate that the legitimacy of the police, the courts and the law shapes a variety of important public behaviors. These include: deference to police authority during personal encounters; everyday compliance with the law; cooperation with legal institutions; and the acceptance of police authority (for a review of this literature see Tyler, Goff, and MacCoun, 2015). This literature studies ordinary citizens, and is relevant to both street criminals and white-collar offenders.

The role of values can be illustrated by considering many issues. One example is tax compliance. It is hard to argue that people pay taxes out of fear of detection for noncompliance since the likelihood of being detected is very low and penalties are both small and uncertain. Yet the rate of tax compliance in the United States is high. So, what motivates this behavior? The argument made here is that legitimacy, morality, and social norms are all motivational forces that are distinct from risk of punishment. In the United States these have all been forces that promote law-abiding behavior in this and other arenas. Of course, there are limits and when these non-instrumental factors are weak or nonexistent, as with the prohibition of alcohol consumption in an earlier era and laws against drug use today, it is more difficult to motivate rule adherence.

The idea of examining explained variance has already been noted. This line of argument can be extended and leads to the suggestion that what is needed are studies that compare deterrence effects to the influence of legitimacy. Tyler and Blader (2005) do this in two studies of employees. They show that in the case of within-company social dynamics, perceived risk is relatively unimportant in shaping employee compliance with organizational rules relative to the legitimacy of the companies' internal culture.

Tyler examines this same question in a survey of 4,430 employees and finds that instrumental factors explain 1 percent of the variance in required compliance while social factors, including legitimacy, explain 19 percent of the variance (Tyler, 2011). As noted

above, the influence of instrumental factors is statistically significant, but not as strong as the influence of social factors. Both types of influence occur, but a direct comparison of magnitude of influence suggests that values are strikingly more influential.

Similarly, Trevino, Weaver, Gibson, and Toffler compare the effectiveness of rules and punishment to the internal values and culture of integrity in companies in a study of 10,000 employees in six industries (1999). Compared to compliance-based programs, values-based programs had fewer reports of unethical conduct, higher levels of ethical awareness, more employees seeking advice about ethical issues, and a higher likelihood of employees reporting violations. Key factors in values-based programs were treating employees fairly, rewarding ethical behavior, and punishing unethical behavior. Here again, a relative comparison reveals the superiority of a values-based approach.

To illustrate the comparison of these models in a corporate setting, I will discuss a study I conducted in a major international corporate bank's private banking group several years ago (see Tyler, 2011, for details about this research). In that study 612 members of the private banking group completed questionnaires regarding their workplace and their workplace behavior. For a subset of employees the answers were compared to responses from supervisors after, as promised, all identifying information was removed from the dataset. The supervisor check suggested that self-reporting was a valid measure of employee behavior (see Blader and Tyler, 2009).

To reflect material gain and loss employees were asked how much they gained by rule following, multiplied by the likelihood it would be observed, and how much they lost by rule breaking, also multiplied by the likelihood it would be observed. They were also asked about their level of compensation and benefits, as well as their long-term prospects.

To reflect consent, employees were asked about their judgments on the legitimacy of management; their trust in the motivations of their managers; and their views about the degree to which they and their managers shared values about appropriate goals for the organization.

What are the behaviors of concern? Compliance is reported rule following. Its parallel is in-role job performance (doing what is required by your job). Deference reflects voluntary acceptance and its parallel is extra-role behavior (doing what is not required by your job). In addition, there is identification with the organization, which has been linked to all of the previously outlined behaviors and further includes general efforts to facilitate the success of your organization (Tyler and Blader, 2005). And finally, since the company studied was in the midst of a merger, the study asked if the employee embraced working to make the merger a success, a specific instance of working for the success of the (newly created) organization.

These factors explained 14 percent of the variance in reported compliance with workplace policies and rules. When considered alone, incentives and coercion explained 3 percent of the variance; consent-based factors 12 percent. In the case of in-role behavior 10 percent of employee behavior was explained; coercion-based variables accounted for 3 percent and consent-based variables 8 percent. All of these influences were significant, suggesting that both factors are having an effect. However, consent factors were generally at least twice as powerful.

In the case of deference, 15 percent of the variance was explained; coercion-based variables explained 3 percent and consent-based variables 15 percent of the variance. This means that while both factors are significant when considered alone, when they are

considered together consent-based variables explain all of the variance in deference. With extra-role behavior, 13 percent of the variance was explained; 4 percent by coercion-based variables and 11 percent by consent-based variables.

Finally, 40 percent of the variance in identification with the organization was explained; 4 percent by coercion-based variables and 40 percent by consent-based variables. So, again, when both factors were considered together, consent-based variables explained all of the variance. This was reinforced by the variable measuring identification with the new company, with 25 percent of the variance explained in total. Coercion-based variables explained 3 percent of the variance; consent-based variables 25 percent of the variance. So with the variable central to engagement in and active promotion of the organization, consent-based variables explained all of the variance.

These findings are only from one organization, and the study targeted the type of high-level employees whose jobs are highly discretionary and rule-guided. So it is especially relevant to the issue of corporate regulation. Beyond that, the much broader study of employees already mentioned (Tyler, 2011), a study that both drew upon a nationally representative sample of employees and used a panel design, reinforced the conclusions of the study reported. Hence, there is a strong empirical base to the arguments made here.

This distinction between regulatory strategies is not a new one. In 1994, Lynne Sharp Paine of Harvard addressed this dichotomy in her now famous *Harvard Business Review* article, "Managing for Organizational Integrity." She contrasted command and control compliance programs with market-oriented values-based programs. A compliance approach rests on rules enforced by external force, usually the company itself, but with threats of civil and criminal punishment lurking in the background. Unfortunately, when employees are not monitored, the fear of being caught and punished diminishes, and compliance declines.

The values approach, Paine argues, rests on employees governing their own behavior by voluntarily choosing such behavior in the same manner as one chooses the most appealing product in the marketplace. Paine argues that the goal is to have the employees engage with and adopt the values of the organization as their own. When this occurs, employees are more likely to comply with rules even when they are not monitored. Such employees come to be good stewards of the company's values, helping to instill them in new employees and actively discouraging those who seek to violate them.

4.2 What Data Is Collected?

The perceived dominance of deterrence is aided by the tendency to only collect data relevant to the dominant theory. In America, national surveys collect information on crime rates, arrest rates, and sentencing. These can be linked to statistics on the certainty and severity of punishment, as well as the length of sentences. However, it is not possible to compare the influence of the risk of punishment to the influence of legitimacy (Tyler, 2007). There are no national survey research studies dedicated to the periodic measurement of the legitimacy of law, the courts, or the police or administrative regulatory agencies. The type of comparisons presented in this discussion are typically not possible since only data on the probability and severity of punishment is available. This reinforces the approach of examining only whether such factors produce a statistically significant effect.

5. THE MYSTIQUE OF INSTRUMENTALISM

If corporate governance via legitimacy is a desirable and effective approach why is it so hard to build regulatory models about consensual approaches? The findings reviewed suggest that legitimacy is a highly desirable feature of social systems, with many appealing features as a possible basis for the rule of law. Why, then, is it so difficult to create and maintain a compliance system based upon legitimacy, and why do authorities use instrumental approaches based upon utilitarian models? Why is the immediate response of legal authorities to a crisis, whether it is an issue of financial misconduct or not, to focus on threats and sanctioning?

My suggestion is that instrumental approaches are seductive because of their short-term features. These approaches are appealing for both practical and psychological reasons. And, these appealing features lead authorities to discount the long-term difficulties and costs of using such models. There are attractions to deterrence approaches that reflect psychological benefits to the authorities exercising power, rather than being indices of actual effectiveness in controlling rule following. For these reasons authorities overestimate the effectiveness of the utilitarian approach to the implementation of laws and regulations. They have an excessive belief, for example, that threat deters immediate behavior and that punishment lowers recidivism.

If research does not support this argument with the strength that is assumed by conventional wisdom, as is suggested by the literature reviewed above, then why would it continue to represent the conventional wisdom? A first reason already noted is the use of the statistical approach noted above. Studies are framed in ways that support an argument in favor of deterrence, when other framings would support different conclusions. In particular, a comparison of effect sizes would suggest that both coercion and consent matter, with consent being considerably stronger in its influence on behavior.

Some of the conventional wisdom in favor of deterrence is likely based on the behavior that regulatory authorities see occurring in front of their very eyes every day. People faced with authorities generally comply in the moment, when the threat of those authorities is palpable (although evidence suggests that in those situations they often resist). Then, later (and, more importantly, outside the scope of plausible surveillance), when their behavior is not motivated by the immediate threat of punishment, people renege. As a consequence, those in positions of authority have the continual experience of seeing power work to influence behavior, when in fact that influence is extremely short lived and limited in scope. People in power therefore come to think that the threat and use of force is a more viable and effective strategy than it actually is.

In reality, as I have detailed above, reviews of the literature consistently show that the threat and use of force is often ineffective and generally not as strong in its impact as is typically assumed. Variations in the likelihood of being caught and punished have, at best, a minor impact on criminal behavior in many natural settings. Whether people are punished is not reliably related to lower levels of future criminal conduct and more severe punishment is not linked to less criminality in the future. When this widespread lack of empirical support for force-based approaches is compared to the general belief in the effectiveness of such models, the question is why this widely held, but mistaken, belief persists?

To some extent this continuation in a flawed belief reflects the self-fulfilling nature of

theories and models. Ferraro, Pfeffer, and Sutton discuss the dominant role of economic models in organizational theory and the similar lack of strong empirical support for such models in that context (Ferraro et al., 2005). They argue that whether or not a theory appears self-evident is more strongly related to whether it is consistent with cultural myths than whether it is supported by empirical evidence. This leads to the question of why people find it so compelling to think of people as utilitarian. Does utilitarianism in some way comport with our understanding of everyday experience? At least in the case of authorities, these beliefs persist because power produces compliance in the everyday personal experience of legal authorities. These beliefs have developed into a “myth of self-interest.” Studies show that people expect others to be more strongly influenced by self-interested judgments, for example about potential rewards and punishments than they actually are (Miller and Ratner, 1996, 1998). This is especially true of people in positions of authority.

Once people have such a conception of their own and others’ motivational nature, it is difficult to let go of those beliefs, even when the evidence in favor of them is discredited. As Baron notes: “We tend to hold to our beliefs without sufficient regard to the evidence against them or the lack of evidence in their favor” (Baron, 2000, p. 195). Psychologists refer to this as “belief perseverance” (Anderson et al., 1980; Ross et al., 1975). Instead of openly considering evidence questioning their beliefs, research suggests that people engage in psychological strategies to blunt the impact of discordant information upon their beliefs.

One approach that people use is to look primarily or exclusively for confirming information that allows them to maintain their beliefs (Kahan, 2013). For example, people shape the way they frame their study of problems in ways that support their prior views. I have noted a general tendency to frame deterrence studies as questions of whether deterrence works, in the sense that its effects can be shown to be significantly different from zero (Ziliak and McCloskey, 2008). Against this relatively low standard deterrence effects are often found and researchers can conclude that deterrence is effective. The question is whether people are drawn to this approach because it supports their suppositions, or the other way around.

Because of this tendency to focus on arguments or evidence consistent with one’s prior views, a key question is what type of evidence or process can minimize these motivations and encourage people to be open to new information. Kahan has discussed this issue in the context of messages about climate change (Kahan, 2013). People have a natural tendency to interpret messages through the framework of their prior ideology and to engage in identity-protective cognitions. On the other hand, this does not mean that people are always insensitive to information that goes counter to their prior beliefs. Both the crafting of messages and general training and experience can shape openness. Kahan, for example, shows that judges are more open to discrepant messages than the general public, something that he feels may reflect their professional training and experience.

The same argument suggests that there are better and worse ways to craft messages for them to have an impact (Feinberg and Willer, 2013). In the context of the environment, Feinberg and Willer found that when messages of change were framed in terms of values that conservatives support (purity), they had more influence upon attitudes. Similarly, Feygina, Jost, and Goldsmith (2010) show that the framing of environmental messages influences the ability of those messages to overcome people’s prior values. If global

warming is presented as a threat to the maintenance of the status quo, conservatives support measures to combat it. If they are told that global warming requires societal change, they oppose those measures.

The desire to hold on to beliefs in the effectiveness of deterrence is, as noted, facilitated by the immediate effectiveness of threats of punishment in changing behavior. What is less obvious to an authority in the immediate moment are long-term problems. Consider the case of the police. A recurring problem for the police is the need to return to deal with the same situations and people repeatedly. Similarly, judges have to bring people back into their courtrooms to re-threaten them to enforce orders. Why; because as soon as they are not in the presence of an authority people renege and revert to their previous behavior. Hence, the influence of power is short lived and primarily occurs when an authority is present. As noted, even then defiance and resistance are issues, but the key issue is the lack of any long-term impact.

The dynamics of power are especially pernicious in that there is at best a very modest long-term effect of coercion. Unlike an approach based upon building legitimacy and creating an internal motivation for a person to follow the directives of an authority, the use of power does not obviate the need to use power in the future. Hence, the primary issue is likely to be whether resources exist for continued presence. When there is a short-term crackdown on some location or issue society has sufficient will to devote resources to surveillance, but such approaches are often not sustainable over time. Other issues become important and there are other claims upon resources. The need for resources for surveillance is ongoing and does not become less important over time. Hence, while there is an initial success because power can lead to immediate compliance, an approach using power creates problems for authorities over time.

5.1 Potential Motivations for Holding Instrumental Beliefs

Of course the motivation to govern instrumentally is not only the result of an unwillingness to let go of an under-supported theory. Adopting utilitarian models is also psychologically attractive to the people in authority. Such models support illusions of competence, moral superiority, and enhanced security, all of which provide important psychological benefits to authorities and give them a reason to continue to embrace coercive models.

5.1.1 Illusion of competence

Psychological studies suggest that people generally exaggerate their own competence and ability both relative to task difficulty and to the competence of others (Alicke and Govorun, 2005; Leary, 2007). Such illusions are psychologically satisfying and are associated with high levels of self-esteem (Taylor and Brown, 1988). As Kahneman suggests, “[m]ost of us view . . . our own attributes as more favorable than they truly are, and the goals we adopt as more achievable than they are likely to be” (Kahneman, 2011, p. 255), and “[p]sychologists have confirmed that most people genuinely believe that they are superior to most others on most desirable traits” (p. 258). Having power accentuates this tendency and leads to perceived control over outcomes “beyond the reach” of a power holder (Fast et al., 2009).

Given their high levels of perceived self-competence, leaders naturally want to control decisions, and, to facilitate that goal, concentrating resources in their hands makes sense.

If someone is more competent than others, there are plausible justifications for them to be the person who decides what will happen. Utilitarian models maximize the perception of both leaders and followers that leaders are in control. Leaders create this impression when they engage in top-down management through a model in which they direct the incentives and sanctions. There never seems to be a shortage of authorities with confidence in their unique skills and insights into problems.

An interesting example of this phenomenon is found in research on the accuracy of professional judgments. Researchers often find that professional legal authorities, such as police officers, have higher confidence in their judgmental abilities than do laypeople (Findley and Scott, 2006). These authorities believe that their experience gives them the capacity to make better decisions, even though research frequently fails to support this belief. For example, experts are not generally found to be better at detecting deception or making eyewitness identifications than are laypeople (Bond, 2008), but they are more confident in their abilities. Such confidence reflects high self-esteem linked to feeling like a competent expert, a feeling that is not supported by superior performance.

Similarly, studies find that studies of decision making by jurors typically use decisions made by judges as a reference standard for the right answer, inferring that departures from what a judge would decide reflect the lesser ability of lay decision makers (Kalven and Zeisel, 1966). Studies, however, also suggest that judges are subject to the same types of heuristics and biases found in the decisions made by laypeople (Guthrie, Rachlinski, and Wistrich, 2007; Robbennholt, 2005), and are not necessarily more likely to ignore inadmissible evidence or deal with many of the limits in their ability to manage information or apply the law, shortcomings which are often noted in critiques of the abilities of jurors (Vidmar and Hans, 2007).

An extension of this argument is that a decisive leader is better able to govern than a group. This, in turn, leads to support for the idea that “What this country needs most, more than laws and political programs, is a few courageous, tireless, devoted leaders in whom the people can put their faith.”⁷ Conversely, studies show that it is deliberative and participatory processes that are central to the rule of law and the creation of legitimacy (Grimes, 2006), so that the concentration of power in an individual who makes policy decisions and implements them instrumentally is less likely to produce popular legitimacy.

This utilitarian approach to social order may have advantages at least in the short term, which will be discussed below, but there has been and continues to be a “romance of leadership” whereby leaders’ ability to shape outcomes is exaggerated both by followers and by leaders themselves (Meindl, Ehrlich, and Dukerich, 1985). While such an exaggerated belief in competence may be beneficial to leaders’ necessary self-confidence, it undermines legitimacy insofar as it leads leaders to be dismissive of others and unwilling to work collaboratively.

Exaggerated confidence leads people to take on tasks that are more complex or risky than they can actually manage (Astebro, 2003; Berner and Graber, 2008; Malmendier and Tate, 2008; Windschitl et al., 2008). As a result, leaders step confidently into situations they cannot handle well. They take on more complex tasks than they can manage, engage

⁷ This is an item from the F-scale of authoritarianism.

in riskier actions than they can control, and generally overestimate their abilities to deal with the issues that will arise in complex work settings.

5.1.2 Illusion of moral superiority

A second illusion is the illusion of good character. People view others as less motivated to act upon values, or to behave in a just and moral way, than they are in fact (Messick et al., 1985). As a consequence, they view themselves as appropriate decision makers because their decisions are more likely to be linked to what is right and proper, rather than to their own self-interest. Also, because other people are viewed as acting based upon self-interest, appeals to their values are likely to be ineffective, leaving utilitarianism as the only viable basis for influencing others' behavior (Tyler and Rankin, 2012).

Consider, for example, negotiations. Negotiations require people to make inferences about other people's actions and what those actions indicate about their character. Researchers have found that the Chinese are less likely to make dispositional attributions about others than are Americans (Morris and Peng, 1994). Why? In general, in interactions with others the Chinese are less likely to view others as acting out of poor motives, such as self-interest or a desire to win, and instead view the other parties' actions as flowing from situational forces. Because they make situational attributions, viewing behavior as caused by forces within the situation rather than the character of the actors, they are less likely to interpret the actions of others as reflecting an untrustworthy or self-interested character, and they are more able to successfully engage in cooperative interactions. They are less likely to refuse to deal with the other party because they think they are being dishonest, untrustworthy, or immoral (Morris and Peng, 1994).

Interestingly, while people in positions of authority may hold illusions of moral superiority, there are suggestions that high-power positions do not encourage people to actually be more moral. Rather, holding power can encourage displays of indifference or even harm to others (Wilkinson and Pickett, 2009). This is because high power encourages people to think of others in instrumental terms, as means to be manipulated to achieve personal goals, and less from an empathic perspective (Gruenfeld et al., 2008). The issue of morality is complex, but these findings suggest that the illusion of moral superiority among those in positions of power is particularly striking given that those individuals may in some ways wear moral blinders and actually be less ethical than people without power.

5.1.3 Psychological benefits of illusions

The idea that people might benefit from holding psychological illusions was illustrated by Taylor and Brown (1988), who demonstrated that people who had exaggerated feelings about their abilities were healthier than were people who were more realistic (i.e. correct in their self-assessments). In fact, being accurate about oneself and having good feelings about oneself turn out to be a trade-off, so there are clear psychological reasons for focusing upon feeling good about oneself for enhancing personal well-being.

Because of their illusions of competence and character, those in authority have lower levels of stress (Sherman et al., 2012). They are also motivated to govern instrumentally, acting proactively to control others (Keltner, Gruenfeld, and Anderson, 2003) and treating other people as objects whose value is defined by their utility in achieving instrumental goals (Gruenfeld et al., 2008).

Since they believe that they are the most competent individuals in their community,

organization or society, authorities believe that they should control resources and determine how these should be deployed within the community. Because they are the most moral, they believe that it is appropriate for them to make decisions that involve the well-being of others. There are, therefore, a variety of reasons that authorities fall easily into a utilitarian approach, managing social order by the threat or use of force and deploying community resources to address the problems and concerns that they feel are of importance.

5.1.4 Illusion of control

Finally, psychologists have long recognized that people want to have control over outcomes that matter to them. Because of this motivation people exaggerate their control over outcomes (Langer, 1975). When authorities (or anyone else) control resources and power they feel secure and protected because they believe that they can control the behavior of others. In other words people generally exaggerate their control over events because feeling that events are controllable is psychologically reassuring. There is further psychological reassurance in a perception of having superior force capabilities when entering an uncertain situation. As an example, the police seek to project force and dominate situations using their possession of a variety of types of weapons: guns, clubs, Tasers, mace, etc.

Ironically, while being psychologically reassuring, seeking to maintain control through dominance creates a problem for authorities such as the police because it leads to anger and resistance in those who they are attempting to control. Relationships are defined by the police in terms of dominance and subordination through the use of power, and the people they are dealing with then respond within a framework of resistance and defiance (McCluskey, 2003; Kelley and Stahelski, 1970).

What about work authorities? Research suggests that when employees experience dominating authorities, particularly those who act in ways they view as illegitimate or unjustified, they find ways to gain revenge (Aquino, Tripp, and Bies, 2001, 2006; Groth, Goldman, Gilliland, and Bies, 2002; Tripp, Bies, and Aquino, 2002, 2007). Such styles of authority both encourage resistance and drive behavior underground, leading to sabotage, shirking and theft. And, while the focus of much recent discussion has been on corruption in management, it should not be forgotten that issues such as theft on the job have a long history of concern, because they are massive and ongoing issues in terms of workplace loss. Beyond the desire for revenge, a large group of employees simply seek to hide their behavior, making the use of strategies to detect wrongdoing essential.

5.2 Shaping Values

A second issue is the ability of authorities to create values. It could be the case that the focus on sanctions is a simple function of recognizing what the law can do. It is possible to impose sanctions. Similarly, management can impose costs or provide incentives. Can either build values? Values suffer from being viewed as “squishy” or “unmeasurable,” in contrast to sanctions, which can be quantified in terms of both threatened and delivered punishments. Authorities can feel that whatever their limits, strategies based upon command and control are based upon levers that they can control.

The research-based answer is yes it is possible to develop organizational models both

within companies and within government to create and maintain values, in particular legitimacy. Studies strongly support the argument that both moral values and legitimacy are influenced by the policies and practices of legal authorities and management. Two distinct literatures demonstrate that the actions of legal actors and of managerial authorities shape rule following. In both cases it is the procedural justice of the authorities that is central. Hence, authorities can build moral and value-based commitment to the rules by exercising their authority, using fair procedures and treating those in the organization fairly (Cohen-Charash and Spector, 2001; Colquitt et al., 2001; Tyler and Blader, 2000).

These findings make two important arguments. First, that organizations can create a culture that shapes employee behavior by creating value-based motivations for rule following and ethical behavior. Second, that research indicates what such a culture should look like. It should focus upon making decisions using fair procedures and treating people justly. These arguments are consistent with the organizational culture standard in the revised Federal Sentencing Guidelines for Organizations. The guidelines state that organizations should “encourage ethical conduct and a commitment to compliance with the law” (Finder and Warnecke, 2005, p. 18). The work noted indicates that creating and maintaining such a culture requires that employees regard the rules and procedures of the organization as fundamentally fair (Tyler, 2005; Tyler and Blader, 2005).

The results of such studies tell us clearly which aspects of the workplace are central to shaping values. But, consider first that what they tell us is not true. The rewards that people receive from the organization, their salary and benefits, the degree to which company policies favor them, and the risks of punishment that they face if caught violating rules *do not effectively engage employee values*. Further, the fairness of organizational outcomes is not a primary driver.

What these results do tell us is that employees’ beliefs that their organizations are legitimate and moral and that they see managers making decisions using *procedures that they believe are fair* are the key factors that engage employee values. As we have argued, employees care about the fairness of their work environment. In particular, they are sensitive to the fairness of the procedures used within their work organization. The role of procedural justice is important even if we ignore values and simply look at the direct role of procedural justice in increasing rule-following behavior.

When employees indicate that their workplace is or is not procedurally fair, what do they mean? Answering this question is fundamental to understanding how to design workplaces that engage employee values and encourage rule and policy adherence. Prior studies of procedural justice in work settings identify two key dimensions of employee procedural fairness judgments: fairness of decision making and fairness of interpersonal treatment. These two types of fairness can be evaluated at the organizational and work group level. This leads to four procedural factors: decision-making fairness at the organizational level; interpersonal fairness at the organizational level; decision-making fairness at the workgroup level; and interpersonal fairness at the workgroup level.

Studies at the organizational level indicate that employees evaluate the procedural fairness of their overall organization, its policies and procedures, and the actions of the CEO and board. Separately, they assess the fairness of the procedures used by their workgroup supervisor and co-workers. Aspects of procedure, decision making and interpersonal treatment, independently and collectively, contribute to overall procedural justice evaluations.

At each level, employees consider two types of procedural issues: quality of decision making and quality of interpersonal treatment. The most obvious aspect of procedures is that they are mechanisms for making decisions. When thinking about those mechanisms, employees evaluate fairness along several dimensions. First, do they have opportunities for input before decisions are made? Second, are decisions made following understandable and transparent rules? Third, are decision-making bodies acting neutrally, basing their decisions upon objective information and appropriate criteria, rather than acting out of personal prejudices and biases? Fourth, are the rules applied consistently across people and over time?

Quality of interpersonal treatment is found to be equally important. It involves the manner in which people are treated during the decision-making process. First, are people's rights as employees respected; for example, do managers follow the rules specified in organizational manuals or employment contracts? Second, is their personal right to be treated politely and with dignity acknowledged, and does such treatment occur? Third, do managers consider employee input when making decisions, and are the decision makers concerned about employee needs and concerns when they make decisions? Finally, do the decision makers account for their actions by giving honest explanations about what they have decided and why they made their decisions?

Research shows that each of these four aspects plays a distinct role in shaping employee judgments about whether their workplace is fair. Our argument is supported by an empirical analysis in which the influence of the four elements is considered in each of the two studies we have been examining. The results indicate that each element is independently important, with employees considering organizational-level issues of decision making and interpersonal quality of treatment and workgroup/supervisor-level judgments of the same two issues (Blader and Tyler, 2009).

5.3 Utilitarianism in an Organizational Context

As has been noted, the benefit of utilitarianism is that it allows for the possibility of quick changes in the deployment of resources and resulting changes in individual behavior (Magee and Galinsky, 2008). It is easier to change the allocation of instrumental resources than it is to create values such as legitimacy. Creating values is always a long-term project. Hence, instrumental approaches are most likely to be adopted when people do not plan ahead and are managing reactively as problems develop; when people are responding to emergencies, such as terrorism or a crime wave; and when people are operating within a short-term framework.

For example, police departments respond to homicides by "hot spot" policing strategies in which they flood an area with police officers (Weisburd and Braga, 2006). Crime goes down, but departments can seldom maintain the high levels of patrols needed to maintain this effect, so eventually the officers are transferred out as the threat diminishes, causing crime rates to again increase (Rosenbaum, 2006).

The question of how much importance private companies will give to creating and maintaining an ethical work culture is the key to whether deterrence is the only viable model that businesses can adopt. When businesses need to achieve short-term quarterly profits or political leaders must produce rapid gains prior to an election, instrumental approaches are attractive. The problem with utilitarianism, however, is that over time it

undermines the relationship between authorities and populations and is therefore difficult to sustain in the long run. Utilitarian control is personally satisfying to authorities and may yield short-term successes, but it fails in the long term. So, it is less desirable when there is a long term and authorities have the luxury of considering it.

What are the long-term problems created by an instrumental approach? The first problem is that this approach creates an undifferentiated social reality. The key to effective interactions is to distinguish among people by identifying those who can respond to behavior based upon their values and those who must be dealt with instrumentally by making threats or promises (Kelley and Stahelski, 1970). However, when people are approached from an instrumental perspective with threats or promises they respond instrumentally by reacting in terms of costs and benefits. As a result authorities create a situation in which they deal with everyone instrumentally, irrespective of whether those people could potentially respond to them based upon values if their values were appealed to. The authorities, in other words, do not motivate anyone to obey the law because of their view that legal authorities are legitimate and ought to be obeyed, since they threaten all the members of the community with fines, arrest, or imprisonment for noncompliance. This is an inefficient strategy for creating cooperation and sub-optimal for the authorities trying to garner that cooperation (Axelrod, 1984).

The pyramid of regulation is one example of the application of this approach (Ayres and Braithwaite, 1992). Ayres and Braithwaite argue that everyone should initially be approached through appeals to values. Most will respond. The few who do not can then be treated as subject to punishment. In this manner, resources can be directed toward the small group that needs surveillance and sanctioning while the majority, who respond to values, is addressed in terms of appeals to values.

One important message of studies of businesses is that people often engage in unethical behavior when they are under situational pressure. They fear failure. As already noted, the tendency to take on too much risk leads to failures and puts people in situations in which they face possible or even probable failure. In such situations they may be motivated to seek short-term solutions, ignoring their values. Perhaps what is needed is an Ayres and Braithwaite model for situations. We might treat all situations as situations in which people can act on values and then refine our understanding of situational pressures to identify fear of failure situations in which values are less likely to be effective. In such settings monitoring should be stronger.

In addition, surveillance is problematic because it is a self-perpetuating strategy. When managers adopt a strategy of closely monitoring employee performance they create no basis for trusting employees to work when they are not being monitored (Kruglanski, 1970; Strickland, 1958). As a consequence, managers need to continue to monitor those employees. Similarly, if the police encourage law-abidingness through the threat of punishment, they can never be sure whether people would obey the law if they were not watching. Hence, they need to continue to create a credible threat of punishment in the future.

Finally, and ironically, in the long term continued surveillance turns out to be needed because a focus on instrumental factors “crowds out” the role of other motivations in shaping rule-related behavior (Frey, 1994). Even if people are initially motivated to comply with the law both because of concerns about being caught and punished, as well as for value-based reasons such as legitimacy, morality, and peer opinion, authorities’ focus

on deterrence defines the relationship between people and the law as one of risk, and it becomes instrumental. Over time this leads to a decline in the influence of value-based reasons. Eventually people primarily decide whether to comply or to fail to comply based upon their levels of fear of punishment. And, as previously noted, often this calculation leads to rule-breaking behavior.

As an example, consider the well-known study that has already been noted “A Fine is a Price” by Gneezy and Rustichini (2000). A school had problems with parents picking their children up on time. They first appealed to the parents’ norm of responsibility and later introduced a fine. Parents treated the fine as the price of being late and their sense of responsibility to be on time became less central to picking up their children. In other words, introducing a fine turned what was a value-based obligation into an economic transaction. If parents paid the fine, they did not feel they had failed a social obligation by being late.

Despite short-term attractions, a utilitarian strategy undermines itself in the long term. Because of the general ineffectiveness of social control, utilitarian strategies underperform relative to expectations. In particular, these approaches end up costing more than anticipated, so the availability of resources limits the degree to which they can be implemented. The massive growth in prison costs is an example (Barker, 2009). This growth in costs flows from the use of a deterrence approach combined with the resultant pressure for longer sentences. During a period of economic downturn these costs have proved unsustainable.

Such failures cast doubts upon the competence of leaders. However, having framed issues instrumentally, it is difficult for authorities to go back and appeal to values. Trying to change strategy presents both psychological and political problems. First, it requires acknowledging failure, and threatens illusions of competence. Second, the position of leader requires success and acknowledging failure is often not an option. As a result, authorities often perceive little choice but to push for more severe punishments, even though research makes clear that it is certainty of punishment, not severity that matters (Blumstein, Cohen, and Nagin, 1978). Similarly, there is ongoing pressure to devote greater resources to surveillance.

If they lack popular support, the police and courts have no mechanism but threat, and no recourse but massive incarceration. The authorities, furthermore, recognize that if the crime rate goes up they are likely to lose their jobs, so the tendency to double down with sanction-based approaches is extreme. Consequently, society is stuck with a costly and minimally functional system of law and law enforcement.

The management literature shows that once people embark upon a course of action they cannot handle, they tend not to question their competence when their strategy begins to unravel, but rather throw more and more resources into their ongoing course of action (Brockner and Rubin, 1985). Instead of re-examining his or her sense of competence, the optimistic leader takes credit for success, but not failure, so they are unlikely to take responsibility for a losing strategy and be open to its re-examination. This is an effective psychology when the goal is persistence, but harmful when that persistence leads to a failure to recognize a failing strategy. Throwing good money after bad is not always a way to achieve long-term success and doing the same thing over and over believing that it will lead to different outcomes is often self-defeating.

The overall point is that the effectiveness of coercive strategies is overstated relative

to their research-revealed influence, and this creates problems for power holders that emerge over time after they have experienced short-term successes. The development of the coercive approach has within it the long-term seeds of its own destruction.

In particular, because the effect of sanctions is typically less than anticipated, there is a temptation to increase them, anticipating that they will work more effectively at higher levels. The same is true of punishment: a dynamic emerges of ever longer sentences and higher fines. However, research is very clear that severity does not increase effectiveness. What is more effective is increasing the likelihood of detection and punishment. However, these elements, especially raising likelihood, are resource intensive. Hence, the ability of this model to work well is almost always linked to resource limits. If the authorities can, for example, expand police forces to high levels, sanctioning works better.

Police can, for example, flood a crime “hot spot” with officers and lower the crime rate. But they can seldom sustain that level of visibility and presence for long periods of time. A classic example of this problem is found with efforts to control drunk driving in Scandinavia (Ross, 1982). A highly publicized crackdown lowered rates of drunk driving, primarily because people responded by overestimating the risk they faced. As time went on and people recognized that even with the heightened enforcement the actual likelihood of being caught was very low, their behavior reverted to earlier levels. Similarly, companies can seldom engage in the level of surveillance over time that is needed to effectively raise the probability of detection to levels that deter undesirable behavior.

With deterrence the core problem is that by embarking on a force-based strategy, authorities undermine their rapport with the people involved, who come to mistrust and even hate the authorities, to develop oppositional consciousness, and to resist and undermine those authorities. Any hope for cooperation or collaboration is undermined by feelings of distrust and anger and by motives of concealment and misdirection.

Once the ineffectiveness of a force-based strategy becomes apparent, going back is difficult. Any later efforts to appeal to people’s values or build rapport are tainted and unlikely to be successful, even when they would have been the superior strategy if pursued from the outset. Lacking alternative courses of action, and late in the game, the authorities implement the only strategy they see as possible: an even more severe force-based approach. As a result, the opportunity for a value-based strategy is diminished and eventually destroyed.

Mass incarceration is a further example. To make deterrence work there needs to be punishment. Because incarceration increases the risk of recidivism (Lipsey and Cullen, 2007), the punitive system is creating a group of long-term criminals with resulting repeat incarcerations. Moreover, there is political pressure for even more severe punishments, based upon the failure of less severe punishments to work. Of course, research makes it particularly clear that severity does not shape behavior. Severity is attractive only because in the face of the failure of deterrence in general, severity does not require the same level of increased resources that is needed to increase certainty of punishment. It appears to be a way to make deterrence, an underperforming strategy, more effective.

Authorities are constantly found in a situation of declining effectiveness, but it is hard to convert a utilitarian strategy to a legitimacy strategy. Further, because value reliance has been “crowded out,” lifting surveillance often results in problems caused by non-compliance (Frey, 1994). The end of an autocratic regime is often associated with increases in crime, even if the new regime is democratic. Populations used to obeying

out of fear do not associate law-abidingness with values, and suddenly find the risk of punishment to be lower. For example, crime rates increased in South Africa during its democratic transition (Louw, 1997).

And, of course a coercive strategy is currently being used to combat corruption in for-profit organizations. In 2002, Sarbanes-Oxley was passed in response to the large corporate frauds of Enron, WorldCom, and others. Sarbanes-Oxley encourages organizations to take a more command and control approach to compliance. Similarly, the government's response to wrongdoing has emphasized the responsibility to identify and sanction wrongdoing. What is central to both is not that deterrence might be needed but that the general approach taken is framed in terms of creating credible threats of sanctioning and emphasizing mechanisms for surveillance and punishment. The centrality of sanctioning to government approaches to stopping corporate wrongdoing should not be overstated, as the Federal Sentencing Guidelines also emphasize creating an ethical culture.

6. CONCLUSION

This discussion makes clear the importance of examining the limits of force-based approaches in advance of policy formation and implementation. The time to capitalize on people's commitment to values and their prior belief that authorities are legitimate and their values moral is prior to any use of force. And, time is needed to create or strengthen values and to engage existing values through participatory and deliberative procedures, through which people come to trust their leaders and view them as legitimate.

What policy implications flow from this review? Primarily the argument that we need a moral, balanced approach that builds upon the strengths of deterrence and consent-based rule following. That approach should consider the situations in which each approach will be likely to work. It should also think sequentially, trying to build and act upon values when possible, with sanctions as a back-up option to be deployed when values are inadequate.

And, it is important to acknowledge and work against the seductive qualities of command and control models. These psychological characteristics, in particular the attraction of short-term benefits, often lead authorities to be inadequately sensitive to the long-term costs of building models of social control (either government regulation or within-company regulation) only or primarily using mechanisms of deterrence.

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