

Authority, Anxiety, and Procedural Justice: Moving from Scientific Detachment to Critical Engagement

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Tom R. Tyler, *Why People Obey the Law*. New Haven, CT: Yale University Press, 1990. vii+273 pages. \$30.00.

The questions of why people obey the law and whether there is a defensible moral obligation to do so are central to any understanding of the way law works in society (see Dworkin 1977). Law without obedience is a contradiction in terms (Gerstein 1972); unless people are in the habit of responding in an acquiescent manner to the bulk of the rules which issue from the legal system, it can hardly be said that a legal system exists (Hart 1961). While many sociolegal scholars forthrightly struggle to overcome the legacy of legal positivism with its almost exclusive focus on the command-giving, order-issuing, regulating role of law (see Austin 1966; Rumble 1985), and to recognize the facilitative, incentive-giving, meaning-making dimensions of legal life (see Feeley 1976; Geertz 1983), one cannot imagine an adequate theory of law that did not address and account for the varied ways people react to law's commands, orders, and regulations. Law, no matter what else it does, is an important part of the social alchemy through which power is both turned into, and made available to, authority (see Derrida 1990). And because authority, in turn, is known by what it authors and authorizes, its true measure is found in the ways it constitutes us as subjects and "controls" our cognition and our conduct (see Lukes 1974; Sennett 1980).

Asking why people obey law invites examination of the complex character of legal authority and of the way law autho-

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rizes and constitutes. That question invites us to see law as a distinctive combination of moral argument, rhetorical practices, and regulatory mechanisms, the forms of which are culturally and historically specific (see Sarat 1991). With respect to the first of these elements, law strives to realize and attain what each culture recognizes and acknowledges as the good (or, at least, to appear to do so) (Geertz 1983), and, as a result, it seeks to engage moral sentiments in the process of inducing acquiescence. The justness of law is what earns our acquiescence; and even if particular laws seems less than just, we are urged to invest ourselves in the moral value of maintaining a *system* of law.

But law is more than just a branch of applied ethics; in many cultures the concept of legal legitimacy, and the claims to obedience it entails, are associated not only with the adequacy or normative appeal of legal commands but also with elaborate rhetorical practices and traditions of reading and interpreting that have parallels in the rich tradition of biblical hermeneutics (see Leyh 1991; Weisberg 1992). Because legitimacy is deeply implicated in the reading and rereading of “canonical” legal texts which both provide the grounds for legal decisions and limit the play of group interest or individual caprice, communities of interpreters regularly proclaim their way of reading legal texts to be *the* way of reading (see Fiss 1982; also Leyh 1991; Douglas forthcoming 1994). Thus, as Justices Souter, Kennedy, and O’Connor put it in their joint opinion in the recent abortion case (see *Planned Parenthood v. Casey* 1992: 2814),

The root of American governmental power is revealed most clearly in the instance of the power conferred by the Constitution upon the Judiciary of the United States and specifically upon this Court. As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court’s power lies, rather in its legitimacy. . . . The underlying substance of this legitimacy is of course the warrant for the Court’s decisions in the Constitution and the lesser sources of legal principles on which the Court draws. That substance is expressed in the Court’s opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all. . . . The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle.

Souter, Kennedy, and O’Connor directly and explicitly link the legitimacy of the Court and its capacity to issue binding deci-

sions with the distinctive claims the Court makes as a reader of the Constitution.¹

And, beyond morality and hermeneutics, the study of why people obey the law forces us to confront law as power and violence (see Sarat & Kearns 1991b). As the late Robert Cover (1986:1601) so vividly put it, "Legal interpretation [always] takes place in a field of pain and death."² Where moral argument and artful reading fail, state violence stands ready to coerce compliance; where reason and persuasion are not adequate to produce acquiescence, the threat and the actuality of punishment and pain produce a fear-induced compliance (see Andenaes 1966; Feeley 1970; Zimring & Hawkins 1973). Thus any work on the question of why people obey can be measured against the capaciousness of its understanding of law and against the depth and complexity of its description of the way citizens interact with, and relate to, legal institutions.

Because the question of why people obey the law focuses attention on the complex character of law itself, it is of interest to scholars representing a wide range of research traditions in sociolegal study. This question provides one important bridge for establishing commonalities throughout an interdisciplinary community of scholars. For positivists, the question of why people obey can be subsumed under more general concerns about the relationship of attitudes and behavior (for an interesting exploration and critique, see Brigham 1989), or about the deterrent effect of particular penal sanctions (Gibbs 1975). For adherents of Critical Legal Studies (CLS), this question resonates with their interest in legitimation, mystification, reification, and the role of law in reproducing social hierarchy (see Kelman 1987). For interpretivists, it can be rephrased as an inquiry into the social meanings of law or into the dynamics of domination and resistance (Sarat 1990a; Yngvesson 1988; Merry 1990). Thus, any work on this subject can be measured against its willingness to engage in dialogue with the various research traditions that comprise the community of sociolegal scholars.

The question of why people obey the law engages with the world in which so many so often do not obey when we would wish for obedience, while others slavishly obey when we would wish for conscientious refusal (see Kelman & Hamilton 1988; also Tyler 1990). It invites us to inquire about the relationship be-

¹ For an interesting argument disputing the association of legitimacy and any set of interpretive practices, see Douglas forthcoming 1994.

² As Ronald Dworkin (1977:15) puts it, "Day in and day out we send people to jail, or take money away from them, or make them do things they do not want to do, under coercion of force, and we justify all of this by speaking of such persons as having broken the law or having failed to meet their obligations. . . . Even in clear cases . . . we are not able to give a satisfactory account of what that means, or why that entitles the state to punish or coerce him."

tween the scholarship that we do and the worlds in which we live. How good are our findings in helping us understand events which insistently demand understanding? A work which takes up the question of why people obey, then, can be measured against its capacity to help its readers understand not just the preoccupations of theory and research traditions but events in the world beyond theory.

And if, as is the case with Tom Tyler's *Why People Obey the Law*, the work both links that question to other important questions about the way citizens relate to legal institutions (in this case to the substantial and burgeoning literature on procedural justice), and represents a major contribution by a well-known, well-respected scholar in the field, it is likely to attract a wide audience and to carry a heavy burden of persuasion.

In the pages that follow I will describe how *Why People Obey the Law* discharges the burdens that necessarily attach to those who take on such important questions. I will ask whether it enriches our understanding of law, fosters a dialogue with other legal scholars working on similar problems, and explains events like the riots in Los Angeles after the initial acquittal of the police officers who beat Rodney King. In these pages I hope to make clear my admiration for this book and for the sensibilities displayed in it, while, at the same time, suggesting ways in which Tyler somewhat surprisingly seems to undercut his own admirable commitments.

In this essay I want to ask Tyler to move beyond the disciplinary concern with which his work has thus far been preoccupied to take part more fully in the interdisciplinary colloquy that is the distinctive mark of the best sociolegal scholarship. And because Tyler's insistence on his own positivist neutrality is, as I will argue, an anxious insistence, I want to ask him to attend to the anxieties that plague his own writing because I believe that they will encourage, if not compel, Tyler to engage more fully with the world rather than to maintain his own strained posture of scientific detachment.

On my account, *Why People Obey the Law* is a book somewhat at war with itself. Detachment is at war with political allegiance, science with policy. However, to mark the terms of this conflict and to say that a text like *Why People Obey the Law* is at war with itself is not simply to criticize it for its inconsistency, but is, instead, to acknowledge its richness and complexity. Such richness and complexity allow me to take sides in the internally evidenced conflict of Tyler's book and to imagine that I am enlisting one of Tyler's own voices against another.

Throughout, the internal conflict evidenced in *Why People Obey the Law* is a battle between complacency and anxiety. While some will find this book complacent in the way it treats what are some rather remarkable findings (e.g., that 82% of

those surveyed say that people should obey the law even if it goes against what they think is right, and that there are no significant racial differences in the perceived legitimacy of law), there is more anxiety than complacency displayed in these pages. That anxiety is an important resource for making a good book better and for moving from scientific detachment to critical engagement. It should be cultivated rather than denied or repressed.

But before plunging into this imagined conversation with Tyler, I want to say a word about my own anxieties. I confess that reading *Why People Obey the Law* was, for me, a little like looking in the mirror at an image long-ago forgotten and now well distorted by the passage of time. Some 20 years ago, the question of why people obey the law, what I then called law-abidingness, was the subject of my Ph.D. dissertation. That dissertation explored the extent to which law-abidingness could be explained by reference to general beliefs about the legitimacy of law as opposed to such "situational" factors as the threat of punishment. Seeing these questions taken up by Tyler, in a far more sophisticated, systematic, and lucid way, is for me an occasion to reflect on changes in my own work, and changes in the field of sociolegal studies. These changes have left the field both more pluralistic and more divided, and they make Tyler's active participation in an interdisciplinary dialogue all the more important.

Twenty years ago, like Tyler, I did survey research and spoke about obedience; now I am much more likely to rely on participant observation or intensive case studies and to talk about domination and resistance (see Sarat 1990a). Then, like Tyler, I studied attitudes toward law (Sarat 1975, 1977); now ideology and consciousness engage my attention (Sarat & Felstiner 1986, 1988, 1989). Then I embraced, even if I did not completely understand, Tyler's kind of positivism; today I take up normative questions and often assume a critical posture (see Silbey & Sarat 1987).

It is, of course, dangerous to use a review essay as a vehicle for an intellectual autobiography of interest to an audience of one or for an imagined conversation of interest to an audience of two. I indulge this danger because I want to identify myself, as fully as possible, with the internal tensions as well as the problems and possibilities of *Why People Obey the Law*. I want to invite Tyler to broaden his interest in procedural justice to include the question of how law legitimates itself and of the meaning of legitimation for the way we think about legal consciousness. I want to invite him to engage with those who study legitimation rather than legitimacy and to connect his interest in law-abidingness to events in the world that demand our attention as scholars and citizens.

Law-Abidingness and Legitimacy: On the Centrality of Normative Concerns

Why People Obey the Law reports the results of a telephone survey of a random sample of citizens in Chicago, Illinois. The survey was conducted as a panel study³ in which respondents were interviewed about their attitudes toward law and their experiences with police and courts. They were asked, in addition, to self-report on whether they had ever violated one or more of six laws—by speeding, parking illegally, disturbing the peace, littering, driving while intoxicated, and shoplifting.⁴ More than 70% of the sample report that they never have engaged in any of the last four of those illegal behaviors (see p. 41), with women and older people the most likely to say that they always comply with these laws.

The real energy in *Why People Obey the Law*, however, is not spent documenting, or commenting on, the extent of law-abidingness; instead, it is invested in an effort to understand what influences compliance, what factors explain why people obey. This would not be remarkable except for what Tyler himself finds about law-abidingness and the perceived obligation to obey the law.

Tyler identifies four general factors which, on his account, might explain why people obey the law. The first is what he calls “sociological.” Included in this category are considerations like the perceived likelihood of being arrested and punished (deterrence), perceived peer disapproval, and beliefs about the morality of law breaking. Second are “political” factors, especially the influence of satisfaction with the performance of legal authorities. Third is legitimacy, which is operationalized as the “perceived obligation to obey the law” and “as support for legal authorities” (p. 45). Finally are demographic factors like age, gender, and race.

Among all these factors, perhaps the most striking finding is that between 84% and 100% of those surveyed responded that it would be “morally wrong” to break each of the six laws about which they were asked. Eighty-four percent said it would be morally wrong to speed; 86% said it would be wrong to park illegally; everyone said it would be morally wrong to drive drunk (p. 44). This treatment of disobedience as morally iniquitous is striking, in one sense, because the laws about which

³ In the first wave, 1,575 people were interviewed; a randomly selected subset consisting of 804 of the first wave respondents were reinterviewed one year after the first interview.

⁴ From the perspective of Tyler’s own interest in demonstrating the power of normative as opposed to instrumental factors in motivating compliance, the choice of these six laws is, I think, unfortunate. The defender of instrumentalism is all too likely to dismiss Tyler’s arguments by saying that the laws about which he writes do not sufficiently engage real, material interests to activate fully self-interest.

Tyler asked were, for the most part, *mala prohibita* rather than *mala in se*. They hardly tap the kinds of moral sentiments one would expect to encounter if the subjects of inquiry were robbery, rape, or murder. One wants to know why people think it is morally wrong to obey laws that seem to have such scant moral content or consequence.

But, in another sense, as anyone who has driven in or around Chicago knows, one has to wonder what really is being tapped by these responses. Surely the acknowledgment that lawbreaking is morally wrong (even though it is highly correlated with self-reported law-abidingness) does not suggest that few people park illegally or speed. Such attitudes cannot be predictive of, or even accurate in explaining, behavior. However, what at first seems like a problem of reliability is perhaps better approached as a problem of meaning.

Because it is puzzling that such extraordinarily large numbers of people would agree that it is morally wrong to break such laws, I am curious about why they agreed with such sentiments. What does it mean for people to attach moral significance to obedience? This seems to be the kind of question that would command attention in a book entitled *Why People Obey the Law*. Yet Tyler himself hardly seems puzzled and curious. Here some might want to use the word “complacent” to explain the fact that Tyler spends no time interrogating the meaning of what he finds.

This failure to interrogate the meaning of what he finds is also the case when he reports that 82% of his respondents say that “People should obey the law even if it goes against what they think is right” (p. 45). This is a truly remarkable finding, one that again should have roused Tyler’s curiosity, if not his moral indignation. While Tyler himself calls it “striking,” the only other comment he makes has to do with the difficulties caused by such uniformity of response for the effort “to identify the antecedents or consequences of views about obligation” (p. 45). An important legal and political problem is treated as just an inconvenience for a social scientist needing variation in order to explain it.

For someone eager to defend the proposition that people are “influenced to an important degree by social values about what is right and proper” (p. 178), the fact that 8 out of 10 of those same people think it is right and proper to put aside moral considerations in the face of a valid law could hardly be reassuring. As Tyler himself has written (1990:1089), “a central problem faced by organized societies . . . [is] the potential harms resulting from creating powerful political and legal structures.” What could be a more troubling indication of that very threat than the willingness of citizens to put aside their own moral judgments and obey immoral laws? While the will-

ingness to act against one's own moral beliefs could indicate a healthy humility about the adequacy of one's own moral judgments, it could also indicate an unhealthy willingness to defer to collective judgments about how we will live together. In any case it merits much more attention than Tyler gives it. His silence may again sound to some readers suspiciously like complacency.

Among all the factors that explain why people obey the law, Tyler is specifically and particularly concerned with the question of whether legitimacy *independently* contributes to compliance. His interest in legitimacy flows from his belief that

[l]egitimacy is a particularly important . . . factor, for it is believed to be the key to the success of legal authorities. If authorities have legitimacy they can function effectively; if they lack it, it is difficult and perhaps impossible for them to regulate public behavior. As a result, those interested in understanding how to maintain the social system have been concerned with identifying the conditions that promote legitimacy; those seeking social change have sought to understand how to undermine it. (P. 57)

Tyler is responding to Hyde's (1983) contention that legitimacy is indistinguishable from other factors that influence compliance and, as a result, has no independent effect on law-abiding behavior. Unlike Hyde, Tyler finds that, while such other factors as personal morality, age, and gender are more important in explaining compliance, legitimacy does indeed have an independent effect on law-abidingness and that those who "view legal authority as legitimate are generally more likely to comply with the law" (p. 62). But in his concern for legitimacy, Tyler's scientific detachment begins to give way to an alliance with existing authority; legitimacy is important, Tyler says, because it is associated with "the success of authorities."

The focus on legitimacy provides a linkage to the second part of *Why People Obey the Law* in which the question becomes what do people want from authorities, or what are the sources of legal legitimacy. In this part of the book the focus is not on whether people obey legal rules but rather on how they react to and evaluate their contacts with legal authorities and institutions (e.g., the police and the courts). Here, Tyler sets out to test the theory of procedural justice (for a fuller statement see Lind & Tyler 1988), namely, the view that people's evaluations of their experiences with law are guided by concerns for how they are treated rather than for the results they obtain. "According to theories of procedural justice," Tyler says, "citizens are not only sensitive to what they receive from the police and courts but also responsive to their own judgments about the

fairness of the way police officers and judges make decisions” (p. 73).

In fact, Tyler finds that “[a]ffect, evaluation of performance, and legitimacy are all more strongly influenced by procedural fairness than by favorability of outcome or fairness of outcome” (p. 97). Providing fair processes, Tyler argues, has a “cushioning” effect, so that “if people receive fair procedures, outcome is not relevant to their reactions” (p. 101), or if “unfavorable outcomes are delivered through procedures viewed as fair, the unfavorable outcomes do not harm the legitimacy of legal authorities” (p. 107). *Why People Obey the Law* reports that “characteristics of the person do not influence the criteria used to assess whether a procedure is fair. . . . This suggests that definitions of the meaning of justice within particular settings may be part of the cultural beliefs shared by members of our society” (pp. 156–57).

The independent effect of legitimacy and the focus on procedural justice rather than outcomes lead Tyler to what is for him the “key implication” of *Why People Obey the law*, namely, “that normative issues matter” (p. 178). “The image of the person resulting from these findings,” Tyler contends, “is one of a person whose attitudes and behavior are influenced to an important degree by social values about what is right and proper. This image differs strikingly from that of the self-interest models which dominate current thinking” (p. 178). In the latter view “people are viewed as shaping their behavior to respond to changes in the tangible, immediate incentives and penalties associated with following the law” (p. 3). The normative perspective, in contrast, “is concerned with the influence of what people regard as just and moral as opposed to what is in their self-interest” (p. 3).

While Tyler treats the interest-based and normative perspectives as distinct and separate, his own discussion of the reason why people are willing to put aside their immediate interest and focus on the fairness of procedures is itself interest-based. People focus on procedural justice, Tyler argues, because of the difficulty of making outcome-based judgments and because procedural justice expresses the minimum moral meaning of membership in society. To “participate in organized groups,” Tyler writes,

individuals must be willing to temper their motivation to seek maximum personal gain with a motivation to cooperate. . . . The procedural focus stems from people’s desire to reap the benefits of belonging to the group without being open to exploitation. If there is a mechanism to assure that outcomes are distributed fairly, long-term membership in the group will be rewarding; evidence that procedures for allocation are fair

provides a basis for a continued belief in the value of organizational loyalty in the face of negative decisions. (Pp. 173–74)

By describing and testing what Tyler treats as two distinct views, *Why People Obey the Law* joins issue with the largest questions about human behavior. In fact, Tyler is less interested in providing the kind of complex exploration of law that an adequate answer to the question of why people obey would seem to require than he is in taking up questions concerning the nature of human character and motivation. He wants to show that there is more to the relationship between citizens and the legal order, as there is to other social transactions (Lind & Tyler 1988), than self-interested, utility-maximizing behavior.

As a result, he embraces and celebrates what he sees as a distinct normative perspective even as his own argument undermines its claimed distinctiveness. Yet given this embrace and celebration, one might have thought he would be particularly concerned that so many people are willing to follow the law even when it violates their own sense of justice. While legitimacy is the moral belief that it is right to obey, it also involves a suspension of moral judgment. The substitution of legitimacy for morality flattens normativity and does not provide a robust demonstration of the importance of concerns about justice in shaping human character.

“The Pull of the Policy Audience” and the Anxiety of Political Allegiance

Tyler should have been critical of the tendency to suspend moral judgment and to operate through the lens of legitimacy, but he is not. He celebrates the triumph of legitimacy over morality for political, not scientific, reasons. The embrace of legitimacy is a result of Tyler’s identification with the perspective of “authorities.” This identification is revealed indirectly in the number of times Tyler makes reference to “authorities” and their needs, as well as by his approving references to stability as a political value. But one need not be content with such indirect measures. “Because legitimacy is under the control of legal authorities, it is the primary focus of attention in my discussion. . . . The Chicago study,” Tyler states, “was aimed at *finding out what political and legal authorities can do to shape public behavior*. Authorities cannot plan based on the assumption that personal morality will support compliance with their actions, but they can rely on their legitimacy” (p. 65; emphasis added).

Science, in this self-description, is put at the service of authority, an authority imagined to be interested in shaping public behavior rather than responding to it. Procedural justice is put foursquare behind the political project of mobilizing consent. It is the need of authorities to be able to “plan” and the

desire to serve that need that in Tyler's own words explains one of the main objectives of his study.

Tyler celebrates the commitment to law-abidingness that flows from a belief in the legitimacy of legal authority even as he worries about what he calls the place of "personal morality." Legitimacy, we are told, provides a far more "stable base" for authorities who seek to "effectively advance their objectives." Personal morality, in contrast, means that citizens are only committed to law-abidingness when it comports with their own substantive moral values. Normativity suddenly seems less important than the need for political effectiveness.

One would think that with findings about compliance, legitimacy, and procedural justice of the kind presented in *Why People Obey the Law*, someone concerned with the political effectiveness of existing authorities would be satisfied and thoroughly complacent. What I find in the book is, however, neither satisfaction nor complacency. Instead there is, I think, a persistent, and from my perspective redeeming, anxiety about the meaning and political significance of those findings.

To understand this anxiety I will focus on Tyler's effort to position his work within the canons of positive social science and to maintain a posture of scientific detachment. This effort leads Tyler to proclaim his own neutrality, though in language that somewhat awkwardly distances himself from the very proclamation he attempts to make. Thus we are told, "The study of procedural justice is neutral about the quality of the existing legal system" (p. 148). How can I understand a book that contains such a sentence? Can I take seriously the effort by its leading proponent to say that the study of procedural justice is truly indifferent to the question of justice?

I find this proclamation of neutrality unusual in several ways. First, of course, is its mere presence in the text. What is the concern that requires it? What is the boundary that it seeks to maintain?

The answer to both questions can, I think, be found in a particular image of social science, and of the university itself (see Frug 1988) in which the validity of inquiry and the maintenance of academic freedom can be assured only if social scientists and other scholars bracket their beliefs, commitments, and values when they do their work.⁵ Yet, if Tyler were confident that such a boundary could be maintained or were complacent that it should be, a proclamation of neutrality rendered through such a distancing reification of the study of procedural justice would not be needed. It is only because Tyler is acutely aware of the precariousness of the boundary that 148 pages

⁵ For a contrasting perspective see Sarat 1990b.

into his book, he feels the need to reassure his readers that it has not been breached.⁶

Indeed, it is not neutrality that leads Tyler to applaud what he calls the “normative perspective.” “Normative commitment,” he says, departing from the posture of neutrality, “is obviously desirable” (p. 65). “Democratic societies,” Tyler suggests, “require normative commitment to function effectively” (p. 65). Or, as if again putting aside his own self-proclaimed neutrality, he writes; “The study does more than make the general suggestion that norms matter: it strongly supports a procedural orientation toward normative issues” (p. 165–66).

Tyler applauds and values the “normative perspective” because it provides authorities a “cushion” to undertake long-term policies. “[A]uthorities,” Tyler tells us, “are freer than they commonly believe to follow painful policies that are sound in the long term. . . . That people attend to matters of procedure gives authorities latitude to pursue long term policies by stressing the fairness of the procedures through which they come about” (pp. 162–63). Tyler is, at this point, a modern Machiavelli giving sound advice to the Prince.

I am concerned that behind the thin veil of Tyler’s self-proclaimed neutrality is an alliance between the study of procedural justice and the project of legitimation itself, between the study of why people obey and the effort to provide greater space for the exercise of legal power. Such a veil of neutrality “allows sociolegal scholarship to disclaim an advocacy role in the collective struggle over community values while it simultaneously rationalizes the outputs of the collective struggle” (see Sarat & Silbey 1988:100).

Tyler himself knows that the discursive proclamation of neutrality cannot, and does not, insure neutrality itself. Despite his own protestations of neutrality, he is acutely aware that the science in which he is engaged is not the purest of pure sciences; it is a science that can be appropriated and used. Indeed one important source of the anxiety revealed in the text is precisely the prospect that it will be used, that authorities will use the findings about procedural justice in a cynical, manipulative way.

Tyler recognizes “the potential dangers of giving authorities the power to affect public behavior. Authorities may use that power to advance their own interest. . . . It cannot be assumed that authorities will be benevolently motivated” (p. 20). He is concerned that authorities (unnamed, unspecified) may take advantage of the commitment to procedural justice that he has documented to “beguile the public” (p. 148) by construct-

⁶ For a discussion of the precariousness of the boundary between politics and social science see Trubek & Esser (1989); Harrington & Yngvesson (1990)

ing procedures that give people the opportunity to be heard while, at the same time, systematically denying them just outcomes. “If public satisfaction is linked to procedural fairness rather than to direct or tangible outcomes,” he writes, “authorities may be tempted to appear fair rather than to solve problems or provide help” (p. 111). This statement reveals a healthy suspicion of authority, a healthy hostility to the powerful that is quite un-Machiavellian in character, and a healthy belief that political and legal authorities cannot be silently trusted.

Tyler’s concern lest the “neutral” results of sociolegal research be misused also expresses itself as a worry about false consciousness. Citizens, Tyler worries, may be so taken in by “symbolic gestures” that “having opportunities to speak draws people’s attention away from the tangible benefits they might receive from authorities. . . . People may be satisfied in situations that should be viewed as unfair if judged on objective grounds” (p. 147).

Tyler has put himself and us on the horns of a dilemma he is unable or unwilling to resolve. He applauds normative commitment but worries that it will induce false consciousness. He suggests that the question whether people ought to be satisfied can only be judged on “objective grounds,” yet he disclaims any interest in talking about what those grounds are by saying, “It is beyond the scope of this book to evaluate whether those studied ‘ought’ to be more or less satisfied than they are with legal authorities” (p. 148). Normative questions are put aside and scientific detachment asserts itself as a cover for continuing political allegiance.

From Legitimacy to Legitimation

Because the interest in legitimacy and its effects is at the center of Tyler’s concerns in *Why People Obey the Law*, it is disappointing, but unfortunately not surprising, that the book makes no reference at all to the work done in CLS on the legitimation of liberal legalism (see, e.g., Kennedy 1976; Unger 1976) and equally disappointing, though somewhat more surprising, that Tyler gives such scant attention to sociolegal research examining the “ideological” consequences of contacts between citizens and the courts (see, e.g., Merry 1990; Yngvesson 1988). While Tyler sees himself engaged in a dialogue with public choice theories about their assumptions concerning human character, he avoids a similar dialogue with legal scholars interested in social power and law’s role in maintaining it. One might explain this neglect as itself just another reflection of a choice of audience, and an interest in disciplinary rather than interdisciplinary work, but something more is going on. First,

there is again the question of politics. Second, there are substantial differences about the nature of legal consciousness itself.

It is possible that Tyler ignores CLS and those who, within the law and society community, practice what Trubek and Esser (1989) call “critical empiricism” because he does not share their political commitments. While his is an anxious alliance, it is nonetheless a continuing alliance with existing political and legal authorities. Theirs, in contrast, is a project of critique and of transformation. Critics do not think that scholars can or should be neutral or that a concern for justice can or should be bracketed from research that makes justice its central concern. Unlike Tyler, critical scholars

seek to expose the assumptions that underlie . . . [legal doctrine and legal institutions], to question the presuppositions about law and society of those whose intellectual product is being analyzed, and to examine the subtle effects these products have in shaping legal and social consciousness. . . . They intend to challenge the legitimacy of our current legal consciousness, thus setting in motion processes of self-reflection and social change. (Trubek 1984:588–89)

Whereas Tyler seems to be basically content with existing political and legal arrangements and with the existing inclinations and avenues for the redress of social grievances, critical scholars see that the existing arrangements of liberal democracy are much too liberal and too little democratic (see Unger 1987b). This means that inequality is tolerated and called freedom, that alienation, repression, and domination are tolerated and called privacy (Gabel 1980), and that law is complicitous in the maintenance and reproduction of such social conditions and arrangements.

Critical scholars are interested in how and why people put up with those conditions and in how their experience is abstracted and denied and deprived of political force and energy. When critics study contacts between citizens and legal authorities, they are less interested in whether citizens find those contacts satisfying than in understanding the way certain meanings are generated and validated while others are repressed and silenced. This they variously label, domination, ideology, or hegemony (see Williams 1977; Gordon 1990).

Critical scholars look at the police or the courts not as institutions whose primary role is to resolve disputes and authoritatively allocate tangible resources; instead, they see them as crucial cultural institutions. They treat calling the police or going to court as processes through which meanings are asserted and contested and, ultimately, through which one structure of meaning is imposed on others. This process results in acquiescence, obedience, and an acceptance of the fundamental prem-

ises on which those institutions operate, for instance, that fair procedure is sufficient to define legal justice. Contacts with police or courts thus become occasions for observing the play of power at the ideological level rather than measuring the degree of satisfaction resulting from such contacts since satisfaction itself is, in this tradition, an indication of the hegemonic power of prevailing legal ideas and arrangements.⁷

This interest in observing the play of power at the ideological level is exemplified in studies by Merry (1990) and Yngvesson (1988). Merry (1990:5) begins her study of the management of interpersonal disputes in criminal, juvenile, and small claims courts in eastern Massachusetts by saying that law “consists of a complex repertoire of meanings and categories understood differently by people depending on their experience with and knowledge of the law.” She sees (p. 6) the litigation process as one in which litigants quarrel

over interpretations of social relationships and events. Parties raise competing pictures of the way things are as each strives to establish his or her own portrayal of the situation as authoritative and binding. Third parties also struggle to control the meaning—and hence consequences—of events through their distinctive forms of authority. Law represents an important set of symbolic meanings for this contest.

Merry suggests that examination of contests over meanings provides an important site for the examination of power. For her, power is exercised at the level of culture and consciousness. Courts are powerful in that they convey hegemonic ideologies. In this way she argues (pp. 8–9) that courts work

not just by the imposition of rules and punishments but also by [the] capacity to construct authoritative images of social relationships and actions, images which are symbolically powerful. *Law provides a set of categories and frameworks through which the world is interpreted.* Legal words and practices are cultural constructs which carry powerful meanings not just to those trained in the law . . . but to the ordinary person as well. (Emphasis added)

Merry (p. 5) summarizes her work by calling it a study of “processes of cultural domination” exercised over people who bring their personal problems to court.⁸

Like Merry, Yngvesson’s (1988:409) description of show cause or complaint hearings in the district courts of two Massa-

⁷ Meanings that seem natural, or are taken for granted, are described as hegemonic (Williams 1977:108). But because the construction of meaning in and through law is, in fact, typically contested, scholars show the many ways in which resistance occurs (Comaroff 1985).

⁸ This cultural domination is reflected in what Merry (1990:5) calls “legal consciousness,” that is, the “way people conceive of the ‘natural’ and normal way of doing things, their habitual patterns of talk and action, and their commonsense understandings of the world.”

achusetts communities focuses on “the negotiation of meaning in neighbor and family conflicts.” Exchanges between complainants and the clerks who handle their complaints are analyzed (p. 410) for the ways they

produce legal and moral frameworks that justify a decision to handle a case in a particular way. The clerk plays a dominant role by controlling the language in which issues are framed, the range of evidence presented, and the sequence of presentation. He silences some interpretations and privileges others, constructing the official definition of what constitutes order and disorder in the lives of local citizens.

According to Yngvesson (1989:1691), “law creates the social world by ‘naming’ it; legal professionals are empowered by their capacity to reveal rights and define wrongs, to construct the meanings of everyday events (as just or unjust, as crime or normal trouble, as private nuisance or public grievance) and thus to shape cultural understandings of fairness, of justice, and of morality.” Like Merry, she argues that the way law names the world and the way legal professionals construct meanings is hegemonic, and that the “most effective kind of domination takes place when both the dominant and dominated classes believe that the existing order . . . is satisfactory” (Gordon 1990:418).

What *Why People Obey the Law* describes as a widespread cultural consensus on procedural justice would be reinterpreted by scholars like Merry and Yngvesson as evidence of hegemony. Where Tyler (p. 157) says that “authorities are therefore aided in their efforts to resolve public problems by shared cultural values and shared views of the meaning of procedural justice” and that such “common values reveal to them the public concerns they ought to address,” critical scholars would talk about the successful mobilization of consent and the creation of hegemonic systems of belief. Where Tyler talks about legitimacy as if it were a freely and autonomously made judgment about the appropriateness of existing legal arrangements, critical scholars would focus on legitimation, that is, the processes through which law actively creates the shared sense that existing legal arrangements are as they ought to be.

The gap between Tyler and critical scholars is, indeed, expressed in the terminological difference between those who write about legitimacy and those who write about legitimation. Tyler, as I have already noted, understands and documents the important role legitimacy plays in maintaining “effective” legal power, but, like others committed to the project of positive social science (here I borrow from Trubek’s 1984:597 description of Max Weber) “he never really explains the legitimation process itself. . . . [For him] the concept of legitimacy . . . is treated as nothing more than an empirical fact to be measured.” In

contrast, critics focus on the processes through which beliefs in legitimacy come to be held, the interests those beliefs serve, and the ways they induce acceptance of a set of social conditions which are less necessary and less just than they are made to appear (Unger 1987a).

Using the language “made to appear,” suggests another reason why Tyler may ignore those who speak about legitimation rather than legitimacy. In addition to divergent political sympathies, there are also great differences in conceptions of the sources/origins of beliefs of the kind measured in the procedural justice literature. Some of these differences have already been hinted at. The basic assumption of the kind of work exemplified in *Why People Obey the Law* is that individual attitudes, beliefs, and evaluations are autonomously and rationally derived.⁹

This is implicit in Tyler’s avowed concern for false consciousness. If there can be false consciousness, then there can be true consciousness as well. To speak “about attitudes toward or about the law suggests a radical individuation, a picture of persons influenced by a variety of factors, thinking, choosing, deciding autonomously how and what to think” (Sarat 1990a:343 n. 1). For critics, in contrast (see Trubek & Esser 1989:17–18),

the values, knowledge, and evaluative criteria embodied in the subjectivity of actors are not individually held units of meaning but rather are the threads or traces of a collectively held fabric of social relations. . . . [T]he individual does not appropriate this fabric through the conscious selection of values or learning of existing knowledge. Rather, in some sense the fabric “appropriates” the individual so that without self-conscious reflection the actor comes to desire the ends, use the perspectives, and apply the rationality that makes up the social fabric. . . . [Moreover, the critical perspective] rejects the ideas/behavior distinction and conceives action as a synthesis of behavior and social meaning. It sees social action as practices that combine interests in and perceptions of the world to create implicit schemes of response, disposition, or habit.

Nowhere would this seem to be truer than in the widespread cultural emphasis on procedure over result, form over substance. One needs only read Hay’s (1975) fascinating study of the legitimation processes of a class-based legal system in 18th-century England to see the way equal treatment is elevated over real equality, or recall the famous aphorism, “The Law in its majesty forbids equally the rich and the poor from sleeping under bridges,” to connect procedural justice to

⁹ This is not to say that Tyler believes that such beliefs are spontaneously generated. He understands that they have an origin in the “socialization” process (p. 176).

power and structure. For critical scholars, procedural justice cannot be understood as an individual preference for a particular mode of treatment. It is, instead, a set of practices, widespread in the culture, which condition and constrain responses to legal and other cultural institutions.

From this perspective, a perspective Tyler largely ignores, it is hardly surprising that the economic model of freely chosen, self-interested preferences does not account for our responses. It is hardly surprising that procedural justice is an independent force in the way we evaluate our contacts with legal officials and institutions. What is surprising is that the literature on procedural justice spends so much energy making this point and so little in the effort to engage with scholars who seek both to describe the practices that generate and sustain those commitments and to examine the interests they serve.

Beyond the Ivory Tower: A Brief Note on Race, Rodney King, and the Study of Procedural Justice

So far I have raised questions concerning the adequacy of Tyler's conception of law and his connection to other legal scholars working on similar problems. Now I would like to take up what I previously called the question of engagement (Harrington & Yngvesson 1990). By this I mean the connection between the scholarship that we do and events in the world around us. What is at stake in raising this question is the relationship between our work as social scientists and our lives as citizens. How good are our findings in helping us understand events that insistently demand understanding?

I would like to address this question briefly by asking whether reading *Why People Obey the Law* helps us understand the reactions to the first trial and acquittal of the Los Angeles police officers who beat Rodney King. Or perhaps more important, would reading this book in March have prepared us for the events of early May? This is, for me, not an abstract question since the day after the Rodney King verdict a student stopped by to talk about the then-unfolding events in Los Angeles. Along the way he asked whether there was anything he could read that might help him understand the verdict and reactions to it. Among the things I suggested was *Why People Obey the Law*.

When, a week later, this student returned to talk about the book he seemed, at first, to praise it as an "important part of the cultural debate about Rodney King and the riots." On one side of that debate were those, he suggested, who wished to contain the meaning and significance of the King episode; bad cops, a failure to provide an "opportunity for representation" through the change in venue, a jury taken in by the artful danc-

ing of the defense. He suggested that Tyler could be put in this camp. This strategy of containment focused on a failure of procedural justice so blatant as to call into question the integrity of the legal process itself.

On the other side of the debate were those who saw in the King episode a symptom of a failure in distributive justice, not a failure of legal procedure. White cops beating black men as the visible symbol of white racism and hostility (Dumm 1993); a largely white jury indifferent to black suffering delivering the spoken verdict of a decade of neglect, a retrospective endorsement of Reagan.

My student said that he found *Why People Obey the Law* to be “complacent,” and he rather aggressively labeled my arguments about anxiety (arguments similar to the ones made earlier in this essay) to be “an anxious overreading.” He was troubled by two other things, both of which he said evidenced the complacency of the book I had given him to read. First was the finding about obeying the law “even if it goes against what . . . [people] think is right.” As he put it, “This can’t be right.” He suggested, and I agreed, that Tyler should have been appalled by this finding, that it showed a strong streak of authoritarianism in American culture and that it was inconsistent with Tyler’s discussion of the normative perspective.

Second was the finding that personal differences—race, class, gender—“do not influence the criteria used to assess whether a procedure is fair” (p. 156). He argued that the Rodney King verdict and reactions to it indicated that there might indeed be greater cultural variation than the book suggested. Evidence for this proposition, he said, was “buried in an appendix,” in Table 9 in Appendix C (see p. 224). Table 9 shows race to be strongly correlated with evaluations of police performance—with white people much more likely to be satisfied than persons of color. Yet in spite of this finding, it is possible, he suggested, to read *Why People Obey the Law* and not know that in the law and legal culture of the United States race mattered (see Crenshaw 1988). As he put it, “There isn’t even an index entry for race.”

To make his point he asked me to imagine whites rioting in Los Angeles if an all-black jury acquitted black police officers for the beating of a white man. For whites, he claimed, the ideology of procedural justice expresses a faith in the legal system strong enough to maintain commitment in the face of unexpected, unjust verdicts. For them procedural justice can be both widely valued and simply taken for granted. But for black people, it might be widely valued precisely because it cannot be taken for granted.

I must admit to a somewhat different reaction to the way *Why People Obey the Law* connects to Rodney King. I think

Tyler's book explains a persistent tendency in American legal culture to turn issues of difference into questions of procedure, to want to turn away from arguments about substantive justice, and to fetishize the spirit of the game (Boorstin 1953). Thus the only real issue for someone who internalizes the ideology of procedural justice is the question whether the legal system lives up to its own promises and commitments. The ability to separate questions of procedural justice from questions of distributive justice, of procedure over substance, might help explain how the jury in the King case could reach its verdict. In response, an insistence that the question of justice be a question of substantive fairness might explain, at least in part, the violent reactions to it.

Conclusion

At the start of this essay I suggested that a book that took on such an important question as *Why People Obey the Law* could be measured against several standards, namely, the richness of its conception of law, how well it fosters an interdisciplinary dialogue among legal scholars, and how well it explains events in the world. With respect to the first of these standards—the richness of its theoretical engagement with law—*Why People Obey the Law*, somewhat surprisingly, turns out not to be very much about law. It is not very much about the complex character of law as a moral, rhetorical and regulatory mechanism. It tells us little about legal institutions and processes, satisfying itself by engaging in a kind of market research designed to explain what people value in their encounters with police and courts.

Moreover, rather than using its central question to engage in a broad interdisciplinary colloquy, this book digs itself deeply into a disciplinary debate within social psychology. It follows up the desire previously expressed by Lind and Tyler (1988:1–2) to present “a field of social psychology that . . . views people as more interested in issues of process than issues of outcome, and . . . [that] addresses the way in which their evaluations of experience and relationships are influenced by the *form* of social interaction.”¹⁰ In *Why People Obey the Law*, this

¹⁰ “In social psychology,” Lind and Tyler argue,

as in the behavioral and social sciences more generally, people have often been viewed as evaluating social experiences, relationships, and institutions on the basis of the outcomes they receive. Theorists have differed in precisely how they think outcomes are linked to evaluations, but a general focus on outcomes characterizes some of the most widely accepted explanations of social behavior. . . . [T]hey all assume that people judge their social experiences in terms of the outcomes they receive and that attitudes and behavior can be explained by these outcome-based judgments. . . . To many social scientists, the suggestion that people care about *how* allocations are made seems counterintuitive. The presumption that outcomes drive evaluations of

desire is rephrased but restated as a debate between an “instrumental” perspective and a “normative” perspective.¹¹

A project that seeks to rehabilitate human character from the reductive utility-maximizing portraits of law and economics is certainly to be admired. Moreover, exploration of two different views of human character is, in and of itself, enormously valuable, and, as Tyler convincingly demonstrates in *Why People Obey the Law* and elsewhere (Lind & Tyler 1988), it has important implications for law and the design of legal institutions. Yet the disciplinary rather than interdisciplinary focus of this book means that much that is relevant to its concerns for authority, legitimacy, and justice in law is simply ignored. As a result, an important opportunity to reach out to a broader intellectual community of scholars whose primary interest is law, and to foster an interdisciplinary exchange, has, at least for the moment, been missed.

And not only does *Why People Obey the Law* miss the opportunity to initiate and participate in such an exchange, it also tries to resist being drawn into an active engagement with the political world. In response I have made two claims about *Why People Obey the Law*. First, the book is, despite the disclaimer, not neutral. Tyler overtly and self-consciously imagines two audiences for his work. One is a community of scholars who read and think about the work of people like Thibaut and Walker (1975) and Leventhal (1976). The other is, however, those political and legal authorities who are responsible for the maintenance, and management of existing public institutions. Tyler understands and hopes that research on procedural justice will have policy impact and that it will be useful to a policy audience interested in the stability and effectiveness of existing institutions or in the design of new procedures for resolving social conflict.

Thus Tyler allies his research with the legitimation project of liberal legalism (see Sarat & Silbey 1988). He sees himself as an ally, albeit as I have suggested an uncomfortable ally, of legal authorities in what he takes to be a basically just legal system. He celebrates stability rather than change, acquiescence

social experiences . . . conforms to widely held lay views of “human nature.” There is a tension between outcome-based and process-based models of the person that manifests itself repeatedly in procedural justice research.

¹¹ As Tyler puts it on the first page,

The first goal of this book is to contrast the instrumental and normative perspective on why people follow the law. The instrumental perspective on the citizen underlies what is known as the deterrence literature: people are viewed as shaping their behavior to respond to changes in the tangible, immediate incentives and penalties associated with following the law. . . . [T]his study explores compliance from a normative perspective. It is concerned with the influence of what people regard as just and moral as opposed to what is in their self-interest.

rather than resistance. Procedural justice is not for him an ideology whose legitimating effects he wants to expose and critique but is, instead, a realizable fact whose achievement his work hopes to advance.¹²

My second claim is that the posture of neutrality and the political alliance it conceals leads Tyler to endorse and support the belief in legitimacy as an adequate expression of the “normative perspective,” even though it is associated with the willingness to suspend individual moral judgments. “Personal morality,” Tyler argues, “is not a feeling of obligation to an external political or legal authority. It is instead an internalized obligation to follow one’s personal sense of what is morally right or wrong” (p. 25). Tyler applauds this suspension of “one’s own sense of . . . right or wrong” at the same time that he embraces the value of what he calls the normative perspective. In the juxtaposition of these enthusiasms, one gets a good glimpse of the thinness of Tyler’s conception of the normative.

Reflecting his sometimes denied, but ever present, political allegiance, and a further displacement of his own voice, Tyler, somewhat ironically places morality under a cloud of suspicion even as he tries to rehabilitate the normative perspective. “From the perspective of the authorities in a political or legal system,” Tyler writes, “legitimacy is a far more stable base on which to rest compliance than personal or group morality” (pp. 25–26). In the end, his version of morality looks like what utilitarians call “individual happiness.” Like individual happiness, in Tyler’s rendition, personal morality has “an utterly subjective, idiosyncratic, and individualist quality” (West 1991:133). In response to that version of “personal morality,” obeying authority is preferred to merely personal moral judgment.¹³ As a result, Tyler settles for a rather weak, or flat, understanding of normativity, in which morality is thankfully bracketed in favor of a general judgment about the exercise of authority and in which conscience and judgment are exclusively focused on the question whether authority is acting appropriately.

With respect to the adequacy of its explanation of events in the world, in particular the riots after what is commonly though mistakenly called the first Rodney King trial, I think the picture is mixed. I am persuaded by my student that *Why People Obey the*

¹² His critics—those who focus not on procedures but on results, those who are interested in distributive justice rather than procedural justice—are, in his account, would-be revolutionaries (p. 148) who appeal to the worst instincts in humans—to the tendency to ask “What’s in it for me.”

¹³ West (1991:134) contends that a similar preference for the external over the internal is reflected in the economist’s reliance on expressed preferences rather than individual happiness as the measure of utility. Economists, she argues, seek to “replace the utilitarian’s nonquantifiable, noncomparable, and essentially unknowable standard of subjective happiness with a standard that is knowable, quantifiable, and comparable and, hence, subject to rational inquiry—namely, the preferences, choices, and consensual transactions of particular, individual consumers.”

Law provides one way to explain the riots, a way that vindicates the American belief in procedure; I am also persuaded that there is something awry in a book that is so blind to the impact of race in our legal culture. However, I am not persuaded that this is a complacent book.

I will stick with my sense that there is more anxiety than complacency in *Why People Obey the Law*, though admittedly its anxieties strain against a rhetoric of detachment and disinterestedness. Tyler seems anxious in his deep awareness of the way his own findings might be used and in his inability or unwillingness to inject himself into the debate that those findings might stir. It is precisely this anxiety that marks Tyler's decency as a scholar and that holds out the possibility of dialogue between those interested in procedural justice and critical scholars. *Why People Obey the Law* would be a more powerful book if it detached itself from its detachment and took its own anxieties more seriously. However, it is my hope that that anxiety marks the first step away from detachment and the first step on the road to critical engagement.

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