POLICE LEGITIMACY

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Legitimacy is the right to govern and the recognition by the governed of that right (Beetham, 1991; Coicaud, 2002; cf. Tankebe, 2007). In order to develop, operate and reproduce themselves effectively, social and political arrangements and institutions must have some form of legitimacy. Those who are subject to these arrangements must see them as right and proper.¹

A necessary condition of justifiable use of state power is the legitimacy of the police force. Legitimacy is the very foundation of police authority. A legitimate police force demonstrates to citizens why its access to and exercise of power is rightful, and why those subject to its power have a corresponding duty to obey (Tyler, 2006). The story of the way in which the police were established, justified and sanctioned during the 19th century has been well documented (e.g. Reiner, 2000). At the zenith in the 1950s ‘policing by consent had been achieved to the maximal degree it is ever attainable’ (ibid: 49), but fast forward to the present day and consent is at best more contingent, at worst entirely absent in certain social situations. The legitimization and subsequent questioning of the police is a tale replete with images of political and social change, accounts of purposeful campaigns of legitimation by the founders of the police, and of subsequent scandals, malpractice and misdirected violence.

Yet public compliance with the law and cooperation with legal authorities is crucial to the maintenance of social order. As Tyler (2008: 803) puts it: ‘Decisions made by police officers and judges mean little if people fail to take them seriously, and laws lack importance if they do not affect public behavior.’ Strategies such as the mass imprisonment that characterizes the US and Russia rely for their effectiveness either on imposing a price on offending that is high enough to deter those who are tempted to crime, or else on incapacitating those that do offend through imprisonment. Repressive ‘social control’ or ‘deterrence’ strategies (Nagin, 1998; Kahan, 1999) are obviously unavoidable for some sorts of offender. Yet coercing compliance with the law is a less efficient route to social order than securing normative compliance. Normative compliance, which stems from internal motivations, does not depend upon the ability of legal authorities to effectively deploy incentives and sanctions. Being able to gain voluntary acquiescence from most people most of the time (due to their sense of obligation) not only increases effectiveness and decreases cost; it also frees up authorities to focus their attention on those whose behaviour seems to be responsive only to threats of punishment. Deferring voluntarily to police decisions and rules, people grant the police the power and authority that are necessary for social regulation (Tyler & Huo, 2002).

Legitimacy may be key in securing such public feelings of obligation and responsibility toward the law. In particular, US research suggests that when people view the police as a legitimate authority they are more likely to cooperate with officers and comply with the law (Sunshine & Tyler, 2003). Tyler sees legitimacy as the public feeling of obligation to voluntarily defer to the police. Such deference is not due to fear of sanction, nor due to personal morality regarding the law, but rather out of a pure responsibility to obey the authority of legal rules and law enforcement agents. Such legitimacy results from the authorization of authorities to determine appropriate behaviour. This authorization removes the need to active one’s own moral principles. Instead, we obey an authority because that is the right thing to do.

There are two more aspects of legitimacy in policing that are worth mentioning in this introduction (although we leave others to expand upon these two issues in the Wiki). The first is the legitimacy granted by the public (and by the political system) to specific spheres of police action and power. In which areas of social life are the police allowed to wield their authority? What legal powers

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¹ This is an entry to the National Policing Improvement Agency policing ‘Wiki’, which is both a wider online knowledge management resource and a repository of information about past, present and future issues that have an impact on the police service.

² Both authors work in the Methodology Institute at the London School of Economics and Political Science.

³ Although some political philosophers would argue that legitimacy must involve some ‘objective’ criteria or requirements of justice and rationality (see Habermas, 1979; Rawls, 1993).
are the police granted? Will the public support empowerment such as detention without trial, and the mandate to deal with anti-social behaviour? The second is the internal legitimacy of the police organisation that governs officer behaviour and police culture (Tankebe, 2009; Tyler, 2008). We focus in this initial piece on the core of police legitimacy – that is, how it relates to public cooperation and compliance.

The entry falls into four sections. The first addresses what legitimacy means. The section considers what factors might influence legitimacy with a particular focus on police activities (which means a focus on the role of public trust and confidence in policing). The third outlines the process-based policing model developed by Tyler. And we conclude with some brief thoughts on implications for policing policy and research in England and Wales.

1. What is legitimacy?

In political philosophy, theories of legitimacy are often confined to a very specific set of social relationships: namely those between individuals and institutions – such as the police – and overarching structures such as the state. The concept of legitimacy is generally bound up with the right to be recognised, to have remit over a certain area of life (Habermas, 1979), and to command and be obeyed (Weber, 1978; Tyler, 1990). Applied to the criminal justice system the concept of legitimacy brings to the fore notions of power and authority. While definitions of legitimacy vary widely, a key feature of many is that it confers the right to command and promotes the duty to obey (Weber, 1978; Tyler, 1990). People defer to, and cooperate with, legitimate authorities because they feel it is right to do so (Sunshine and Tyler, 2003a; 2003b). Theorists from Weber onwards have viewed legitimacy as a vital component of social institutions, both in the long run for their very survival, and also on a day-to-day basis since people will defer to and assist institutions they feel to be legitimate.

Hinsch (2008) makes a useful distinction between concepts of legitimacy and conceptions of legitimacy:

- Concepts of legitimacy tell us what is means to say something is legitimate;
- Conceptions of legitimacy specify the criteria that have to be met in order to be legitimate.

In his broad overview of political philosophy, Hinsch identifies two concepts of legitimacy. The first is the empirical concept of the social sciences. The second is the normative concept of political philosophy. The empirical concept goes back to Weber, for whom legitimacy denoted the approval or sincere recognition of a norm, law or social institution. Applying this to the legal system, we might say that the rule of law is legitimate when people see the legal system and authorities as providing an appropriate standard of conduct that must be complied with (crucially, not complied with because of external sanction but because it is seen to be the correct standard). As Hinsch (2008: 40) states: ‘Since no political regime or social order could persist without a fairly high level of unenforced compliance with its rule, the empirical understanding of legitimacy naturally occupies a central place in explanatory theories of social order.’

This is a descriptive account of legitimacy. It states that a system is legitimate when the public grant it legitimacy. An observer sitting outside the system might find a particular arrangement unjust and unacceptable, but they must nevertheless conclude that it is legitimate when those governed believe it to be so. To say something is legitimate is to make a factual claim about the subjective state of mind of particular individuals that belong to one political society.

By contrast, the normative concept of legitimacy sets out ‘objective’ criteria, according to which an authority or institution is legitimate not because of the subjective state of mind of those it governs but rather because the arrangement meets certain substantive requirements (usually requirements of justice and rationality). In addition, any normative conception of legitimacy has to describe why meeting these criteria confers authority on norms, institutions, or persons. Why do the criteria generate morally binding rules? Empirical legitimacy means stating that people believe an arrangement to be right and just. Normative legitimacy means substantive recognition that the truth (or validity) of these arrangements is right and just.
The criteria of legitimacy determine the qualities that make an arrangement legitimate. On the one hand, some political philosophers have followed a loosely Weberian tradition, situating legitimacy in individual’s perceptions that the rule of an authority is justified. Here there might be just one criterion of legitimacy: that individuals have an obligation to obey the rules set forth by the legal system and enforced by legal authorities (such as the police). Consequently, according to the empirical concept of legitimacy we could say that the police are legitimate when citizens feel obligated to obey police directives. But others maintain that in as much as legitimacy is granted by the individual to the institution, it must also contain a normative element – a decision by the individual, whether conscious or not, that the institution shares a certain moral or ethical position (Beetham, 1991). Legitimacy is not just an excuse for power, it is also a justification of that power. This adds to the picture moral alignment between individuals and the legal/criminal system around them. If one follows this criteria then judgements among individuals about the legitimacy of an institution must be based to some degree on assessments of the congruence between its goals, practises and behaviours and their own.

Beetham (1991) adds a third criterion: the perceived legality of legal authorities themselves. Legitimacy, for him, is about the moral justifiability of the power relations bound up in the state and its justice system – conformity to people’s values, its ability to satisfy public interests and normative expectations, and in the legality of power. All considerations of legitimacy must involve a normative, ideological or moral element; and those granting legitimacy always do so on the basis that it is an expression of common shared values.

2. What is police legitimacy?

So there is a distinction between concepts of legitimacy (what it means to say something is legitimate) and conceptions of legitimacy (specification of the criteria needed to say something is legitimate). This phrasing of ‘concepts’ and ‘conceptions’ makes sense within the sphere of political philosophy. But in the social sciences, it is perhaps best replaced by ‘broad framework’ (what Hinsch calls a concept) and ‘conceptual definition’ (what Hinsch calls a conception). In other words, an empirical framework (or concept) of legitimacy places the emphasis on public mandate and opinion. The connected conceptual definition (or conceptions) traces the various criteria that make up this public mandate.

Following the lead of Tankebe (2007) in applying the work of Beetham to police legitimacy, we set out three criteria that combine to form the belief that the police are ‘appropriate, proper and just’ – that is, the criteria which underpin the public mandate of police legitimacy. Our framework is chiefly an empirical framework: it follows what Hinsch (2008) would call an empirical concept of legitimacy. As such, we would define and measure police legitimacy as a multi-dimensional concept with three interlinked elements:

- The obligation to obey – or what Beetham calls expressed consent. Here, the perceived legitimacy of the police is measured by asking people whether they would obey the directives of the police, even if they disagreed with the reasons. A legitimate authority garners obedience from subordinates.
- Moral alignment or normative justifiability – the perceived legitimacy of the police is measured by asking people whether decisions are made which accord with the values and morals of themselves and their social group. Legitimacy needs a moral foundation, otherwise compliance with authority directives is blind.
- Legality – a legitimate authority follows its own rules. So we measure this by asking people for their perceptions of illegal behaviour of the police. A legitimate authority exercises that authority according to established principles.

In such a framework, no one element is prioritised but all must co-exist in the relationship between police and policed for the police to be legitimate. Legitimacy properly understood is not then simply the right to be recognised as the appropriate institution with authority over a particular aspect of social life or set of problems (Habermas, 1979), or ‘largely unquestioned acceptance of authority’ (Barker,
1990: 33), although both are important. It is also actualised or instantiated in specific acts of
deferece, compliance, or cooperation.

If legitimacy is public perception of police conformance to a set of rules, of public perceptions
of the justifiability of those rules, and the expressed consent of the public, we might usefully also
distinguish between high-level and low-level legitimacy. At its highest level, legitimacy may lie at the
core of a deeper connection between individuals and the social and political structures that surround
them (Habermas, 1979; Barker, 1990). This might describe an unspoken alignment of values and tacit
belief that a particular institution should exist and that in its current instantiation it operates fairly and
deserves consent. By contrast, low-level legitimacy may operate at a more immediate everyday level.
Police legitimacy may be a dynamic process – one which, although rooted in deeply entrenched
structures of power and affect, but is experienced and indeed tested by and through everyday
existence.

This dual-layered legitimacy has a number of interesting implications when considering the
criminal justice system. Perhaps, there is a distinction between the legitimacy of the police as an
institution and as an organisation. On one level we have the police institution, entrusted with the
power to intervene into people’s lives to keep the peace and maintain the social order (Manning 2003).
This legitimacy appears, in England and Wales at least, to be largely unchallenged, although this has
happened in Northern Ireland. It is rare indeed to hear arguments for the dismantling the police –
problems are usually to be solved by more, or different methods of, policing rather than a turn to
alternative monopolists of legitimate force or entirely new methods of formal social control.
Furthermore, an emphasis on value-alignment and shared viewpoints resonates strongly with
criminological work which sees the (English) police as retaining a strong identification with nation,
identity, the dominant social order, and so forth (Girling, Loader and Sparks, 2000; Jackson and
Bradford, 2009; Loader and Mulcahy 2003; Reiner, 2000; Waddington, 1999). In an important sense
the police may still act as moral representatives of the group, and will be judged by people with this, in
a sense, in mind. Since few people can imagine life outside social groups imagined in such terms, the
legitimacy of the police institution has become bound up with that of the nation or state itself – and
challenges to these social structures remain rare indeed.

On the other hand, legitimacy is much more contested at the level of personal interaction.
Here, judgements about the behaviour of the police as an organisation are much more important.
Individuals are more ready to challenge police behaviour or question officer’s right to compel
obedience. As Mawby notes: ‘The legitimacy of the public police is potentially held up for scrutiny
when any policing activity is engaged in’ (2002: 53). Although such scrutiny of the police organisation
seems only very rarely to become a problem for the institution, this remains a possibility. One only has
to think of views among some parts of the UK’s ethnic minority populations to see how a long history
of illegitimate organisational behaviour has resulted in challenges to the very idea of policing as it is
currently understood (although it should be noted that even here most people retain quite high levels of
support for the police).

On a final note, it may also make sense to bring together both the empirical/descriptive and
normative overarching frameworks of legitimacy. In a comparative study of police legitimacy across
the European Union, for example, one might want to gather data on public perceptions, but also gather
official statistics on the actual workings and structure of the police. We might thus collate information
on what the public thinks about the police, but also what the police actually does. We might question:

- The extent to which the exercise of police power is perceived to adhere to the rules laid down
  for its use.
- Whether these rules should be held as justifiable by those policed, that is, whether people
  perceive them to correspond with and express common shared values (for example, around the
  concept of appropriate use of force).
- The extent to which the legitimacy of the police is expressed by the actions of those policed,
in as much as they defer to officer’s authority, offer assistance, and so on.
The extent to which ‘objective’ data, say on the extent of police malpractice or corruption, or with regard to discrimination against minority or marginalised groups, provide normatively-oriented support for any perception of police legitimacy among the policed.

Such an approach takes seriously public consent. But it also adds a normative aspect, in that experts might agree that the police in a given system are not granted legitimacy simply as a product of public opinion. Instead legitimacy is a function of both public opinion and agreed standards of legality, normative justifiability, and consent.

3. What shapes police legitimacy?

A historical perspective
Reiner (1992, 2000) provides what is perhaps the most influential history of police legitimacy in Britain. The police, he argues, have moved from the status of the ‘sacred’ (a golden age, an ordered and settled England, where the police held iconic status) to the ‘profane’ (where the police are just another public service). Where once the police occupied an iconic and identity-bearing status of British life, public confidence is now ‘tentative and brittle…to be renegotiated case by case’ (Reiner, 2000: 162).

Despite the many ruptures between police and public outlined by Reiner (2000) and others (Smith, 2007; Hough, 2007), however, the police in England and Wales do appear to retain a relatively high level of support among the public, certainly compared with some other state and non-state institutions (government, the media). This support, in as much as it can be equated with legitimacy, speaks to a continued recognition and justification for the police, even as the deference – or obedience – once apparently shown the local bobby has fallen away (Loader & Mulcahy, 2003).

Yet compare the situation in the 1950s with that of the present day and we do find a significant shift. A number of explanations have been proposed (e.g. Loader & Mulcahy, 2003; Hough, 2003; Reiner, 2000). First, there have been transformations in the political economy. The 1970s and early 1980s saw soaring inflation, rising unemployment and increasing levels of industrial and social conflict, with the police often called upon in particular moments of discord (the miners’ strikes for instance, see McCabe et al. 1988). Tense and troubled relations developed between the police and particular communities which are often structurally excluded.

Second, there has been changing values and expectations as society has become more diverse, which brings with it a greater variety of expectations from different communities (Lowe, 2002). How, in an increasingly individualistic and pluralistic society, can the police hope to operate as an ‘effective symbol of a unitary order’ (Reiner, 1992: 779)?

Third, the police service itself has changed. From a parochial and local set of police forces to a complex bureaucratic organisation, the police may simply be less visible and less accessible than they once were (Hough, 2003). Equally, a series of scandals have shaped public attitudes towards the fairness and integrity of the police: well-publicised cases of corruption and abuse of rights over the years have surely damaged their reputation (Reiner, 2000; Loader & Mulcahy, 2003).

Fourth, crime has increased since the Second World War (albeit it has decreased from the mid 1990s onwards). Perhaps the public hold the police partly to account for this? Liberal sensibilities about the seriousness of crime as a problem may have been dented in the 1970s as victimisation became a prominent fact for the middle-classes (Garland, 2001). Increasing direct and indirect experience, the mass media raising the salience of crime and ‘institutionalising’ public concern, and the growing visibility of signs of crime – in the form of physical incivilities, such as vandalism, and social incivilities, such as groups of intimidating youths hanging around in the street – may each have helped to bring crime and the risk of victimisation into people’s everyday lives.

Each of these factors may have contributed to a situation where arguably we have moved from a position where legitimacy is habitual, unstated, almost pre-conscious (Barker, 1990) to one where authorities themselves which are often the key players in questions of legitimacy (Barker, 2001). This idea resonates with the continuous process of legitimisation in which the police is involved (Loader, 2006; Mawby, 2002). In the current target culture the police spends a significant amount of time and
resources on proving its worth to government, media and increasingly the public as a whole. The police must continually act to reaffirm its position monopolizer of legitimate force. On a final note, it is interesting in light of the above discussion that many such claims remain based on the idea that the police can ‘defeat’ crime (which as has often been pointed out is certainly not the case – Reiner, 2007), rather than on issues of value-alignment and so forth which appear to be important to many people.

Trust and confidence as the mediating link; and Tyler’s procedural justice model

Trust and confidence in the police may be the key link between these social and political changes and shifting levels of legitimacy conferred on the police. In other words, legitimacy may have been weakened by public confidence in police effectiveness (eroded by high crime rates and the increasing prominence of crime and insecurity in modern life), by public confidence in police fairness (eroded by police scandals, aggressive tactics, and terse ways of behaving to citizens), and by public confidence in police engagement (eroded by the increasing remoteness of police in daily life, in decreased visibility and accessibility, and in the broader cultural loss of this symbol of a stable, settled life in the community).

Perhaps the most well-known – certainly the most empirically-supported – framework to link public trust (in this case, public trust in police procedural fairness) to legitimacy, and from legitimacy to cooperation and compliance, is the US-based work of Tyler. It is to this model that we now turn. Tyler (2006: 375) defines legitimacy as ‘a psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just.’ This places the emphasis squarely on legitimacy as a subjective property of those governed (a la Weber and most recently Beetham). Tyler’s work applies the group-value model of procedural justice (Lind & Tyler, 1988; Tyler & Lind, 1992) to policing. In Why People Obey the Law, Tyler (1990) provided evidence that policing styles influenced public beliefs about police legitimacy. Crucially, these beliefs in turn promoted – or eroded – compliance with the law. Tyler and Huo (2002) later suggested that legitimacy can also lead to public cooperation with the police, whether through reporting crimes or acting as witnesses.

The basic premise is simple. The experience of procedurally just and fair treatment at the hands of authorities such as the police is linked not only to satisfaction with the decisions reached and with the decision-maker, but also with increased propensities to offer assistance in the future, and, in the case of legal authorities, greater compliance with both the law abstractly defined and with concrete instructions emanating from the authority. These effects are held to emerge because the experience of procedural fairness fosters in people feelings of motive-based trust in and shared group membership with the authority concerned – that both it and they are ‘on the same side’ – and because, by and through these mechanisms, procedural fairness enhances the authority’s legitimacy. The procedural justice framework developed by Tyler and colleagues in the United States (Tyler, 1990; 2004; 2006; Tyler and Blader, 2000; Tyler and Huo, 2002) provides a specific, empirically testable model for the relationships between trust, legitimacy and support, and in doing so provides a compelling argument as to why people do, or do not, cooperate with the police.

The core proposition of Tyler’s procedural justice model is that the activation of individuals’ feelings of responsibility and obligation to their community – and to community authorities – leads to a more favourable orientation towards those authorities. A model of social regulation based on such internal motivations – or normative commitment to the law – is both safer and more efficient than social control based on coerced compliance. Authorities can rely on citizens’ internal motives for self control rather than risking the cost, danger, and alienation associated with using actual force or the threat of force. Equally, internal moral drivers to obey the law and cooperate with the system may be more powerful than an external set of rules involving deterrent threat. These internal moral drivers may be fundamentally linked to the perceived legitimacy of the justice system. Such legitimacy is – according to Tyler – the obligation to obey police authority and is, as outlined above, separate to personal morality.

4. Implications for British policy and research
What, then, is the importance of police legitimacy for policy and academic study? We finish with four brief points. Firstly, much of the above discussion is predicated on the idea that there are in essence two models of social regulation, at least in as much as this term applies to policing, crime and the law. In the first, compliance with the law is achieved via perceived risks of getting caught in wrong-doing and the costs of any punishments which might ensue. That is, compliance is based ultimately on fear. In the second, compliance is encouraged through promoting the legitimacy of the police and other criminal justice agents among those they govern. While this is no panacea – in particular, we recognize that the above discussion contains little mention of power in Luke’s (2005) sense and the potential ability of powerful groups in society to structure the possibilities of thought and debate, and thus how and why authorities come to be perceived as legitimate – we believe that a model of social regulation based on the ideas outlined above is very likely be preferable to one based on instrumental concerns about risk and fear. Not least, of course, because it seems that fairness and decent treatment lie close to people’s concerns about the police and the ways in which they come to see the police as legitimate.

Secondly, the work of Tyler and others strongly suggest that the actions of officers, especially during interactions with the public, are vital in forming and influencing perceptions of police legitimacy, and, through this, cooperation, compliance, and readiness to obey the law. The legitimacy of the police is not simply a given, or pre-ordained, but is in an important sense created and reproduced by the mundane actions of officers going about their daily business. This is an important message regarding the conduct of policing in England and Wales, and one which the current police target culture is indeed moving toward recognizing. How police treat people matters not only on legal or ethical grounds, but in terms of influencing how people will interact with officers in the future, whether they will cooperate by providing information, and so on. Public perceptions of fairness, equitability and transparency of procedure may be central in securing support for and cooperation with institutions such as the police. Fair and decent treatment fosters satisfaction with the authority involved, enhances legitimacy and increases cooperation. If that authority is the police or the courts, this enhanced legitimacy is further held to boost compliance with the law and encourage self-regulation. In contrast, if the police are perceived to be illegitimate not only will cooperation decline but people will be less likely to obey the law, encouraging or forcing authorities to take a more punitive and/or aggressive stance – which will likely be perceived as procedurally unfair by members of the public. A downward spiral of increasing distance and antagonism between police and public is therefore one possible outcome from public perceptions that police are procedurally unfair or unjust.

Thirdly, we should be clear what legitimacy might mean in our given social and political context. At the very least, legitimacy may be distinct from personal morality. According to Tyler (2008) it is the authorization that a person gives to an institution or authority to determine appropriate behaviour; it is the subsequent obligation to follow the directives or rules. This authorization removes the need to activate one’s own moral principles: one simply obeys an authority because that is the right thing to do (Kelman & Hamilton, 1989). On this account, to the extent to which we hold the police legitimate we fell a responsibility and obligation to obey the law and legal authorities irrespective of whether we morally agree with their directives. An example may usefully illustrate this point. Imagine being tempted to cycle the wrong way up an empty one-way street early in the morning. One might have no problem because of one’s personal morality or because of the likelihood of getting caught. Yet one still might not do it because one confers legitimacy to a system of rules and the agents that enforce those rules. This system decrees cycling the wrong way up one-way streets to be wrong. Obeying such apparently meaningless laws seems the right thing to because one has respect for the idea that there must be rules in society, and one has respect for the specific institutions whose job it is to embody and enforce those rules.

Finally, although evidence in this area is emerging in England and Wales much of the discussion above is either theoretical and/or based on research emanating from the United States. While the ideas of Beetham, Tyler and others seem on the face of it to apply very neatly to policing on this side of the Atlantic we cannot assume this to be the case. Much more work is needed to fully trace and explore the contours of police legitimacy in England and Wales and, in particular, its relationship with cooperation, compliance and the rest.
References
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