

Improving Legitimacy in Community-Based Corrections

Joseph A. DaGrossa

U.S. Probation Officer, District of New Jersey

TYLER (2004) HAS suggested that because law enforcement officers cannot be everywhere at once, the threat of formal sanctions alone cannot be relied upon to maintain social order. Indeed, some degree of informal social control is needed to increase compliance with the law. This was the observation of sociologist Max Weber who, in Tyler's (2004) words, "argued that the ability to issue commands that will be obeyed does not rest solely on the possession or ability to deploy power" (p. 87).

The notion that informal methods of social control play a role in order maintenance can be traced to the work of the English philosopher Jeremy Bentham (1789), who suggested that fear of being detected for the commission of a crime serves to prevent illicit behavior because of the damage done to one's reputation. Durkheim (1893) later wrote that pre-industrial societies were held together by a sense of "moral order," commonly-shared values and norms which guided behavior, and that crime was the artifact of a breakdown in these values (which he referred to as "anomie"). More recently, criminologists as diverse as Merton (1938), in his work on social structure and crime; Braithwaite (1989), in developing a theory of "reintegrative shaming"; and Sampson, Raudenbush, and Earls (1997), in formulating the concept of "collective efficacy"; have all relied on the value of informal social controls in maintaining order as an important part of their respective theories.

Continuing in this tradition, a recently-growing body of research has examined the importance of perceptions of legitimacy in maintaining social order. Much work (Mastrofski, Snipes, & Supina, 1996; Mazerolle,

Bennet, Davis, Sargeant, & Manning, 2013b; McCluskey, 2003; Sunshine & Tyler, 2003; Tyler, 1990; Tyler, 2004), for example, has suggested that people are more likely to comply with the instructions of police officers if they view the institution of policing as being just and legitimate. The literature, however, has largely been devoid of efforts to specifically apply the concept of legitimacy to community-based corrections. This brief article makes a modest attempt to fill that void. The article begins with an exploration of assorted conceptualizations of legitimacy, briefly discusses what is presently known about how perceptions of legitimacy are shaped and how these perceptions may facilitate noncompliance with formal methods of social control, and concludes with specific recommendations for probation officers to enhance the legitimacy of community-based corrections in the eyes of those under supervision.

Perceptions of Justice and Legitimacy

Prior research (Sunshine & Tyler, 2003; Tyler, 2004; Tyler & Huo, 2002) has suggested that views of *procedural justice* are critical in formulating perceptions of legitimacy. Additionally, other forms of justice may play important roles in enhancing views of legitimacy and reducing crime; these include *distributive justice* and *interactional justice*. Each of these concepts is briefly explored below.

Procedural Justice

People largely form their views on the legitimacy of authorities based on their perceptions of whether or not the authorities act in a fair manner. They are more likely

to comply with the directives of authorities and accept their decisions if they believe that the authorities operate in a procedurally just fashion. Procedural justice contains four essential components: 1) participation, 2) neutrality, 3) dignity and respect, and 4) trustworthy motives (Goodman-Delahunty, 2010; Mazerolle, Antrobus, Bennet, & Tyler, 2013a; Tyler, 2004). Participation refers to the concept that people are more satisfied with procedures if they believe that they have been given ample opportunity to express their concerns and be listened to. Neutrality means that people have enhanced views of legitimacy if they believe that the authorities are impartial and do not single them out for undue treatment. Additionally, people are more likely to accord legitimacy to authorities if they feel that the authorities have treated them with respect and acknowledged their rights. Finally, people are more likely to feel that they have been treated fairly when they think that authorities have trustworthy motives.

Studies have demonstrated that views on procedural justice are critical in formulating perceptions of legitimacy, which in turn promotes cooperation and compliance with the police. Mastrofski et al. (1996), for example, reviewed accounts of police interaction with citizens in Virginia and concluded that disrespectful behavior on the part of the police was negatively associated with compliance. Subsequent research by McCluskey, Mastrofski, and Parks (1999) in other states reached a similar conclusion. Moreover, when authorities are not viewed as procedurally just in their actions, their status is undermined and people are more likely to disregard their instructions and discount their decisions

(Fischer, Harb, Al-Sarraf, & Nashabe, 2008; Kinsey, 1992; Makkai & Braithwaite, 1993; Sherman, 1993).

Distributive Justice

Distributive justice, rooted in equity theory, posits that individuals will naturally compare the outcome of their efforts with the outcome of those received by others to determine if their rewards are commensurate with their contributions. A perception of inequity results when individuals believe that they have received less compensation than their efforts merit, especially when compared to the payoff received by others. Individuals who feel they have been under-compensated may attempt to restore equity through illegal means or strike out against the perceived harm-doer.

The criminal justice literature is replete with studies that have examined the importance of relative deprivation in crime causation. Although many people contemplate that a relationship exists between poverty and crime, a much more nuanced understanding of economic explanations for crime considers the relationship between inequality and crime (Blau & Blau, 1982; Kawachi, Kennedy, & Wilkinson, 1999; Kennedy et al., 1998). Consistently, the research has concluded that considering disparate allocation of resources provides a more robust explanation for crime rates than does simply considering individual levels of income; in other words, *relative* deprivation is more important than *absolute* deprivation.

In a 1990 study, Greenberg examined the concept of distributive justice by reviewing rates of theft committed by employees in manufacturing plants following the enactment of pay cuts. Rates of theft committed by employees who had experienced a reduction in pay increased following the pay cuts; during the same time period, no such increase was observed in rates of theft committed by employees who did not experience pay cuts. Thefts committed by employees who had received pay cuts were significantly reduced after the management took the time to explain the reasoning behind the pay cuts in a thorough and sensitive fashion, apparently reducing feelings of perceived inequity. Borrowing from the psychological concept of referent cognitions (Folger, Rosenfeld, Rheume, & Martin, 1983; Folger & Martin, 1986), Greenberg suggested that adequate explanations may reduce feelings of illegitimate inequity.

Interactional Justice

Finally, interactional justice, while similar to procedural justice, focuses on the perceived quality of interpersonal treatment one receives in dealings with another. Positive episodes of interactional justice, in which a person perceives that he receives respect from another, are associated with positive emotions. Much research has examined the importance of perceived respect from an assortment of subcultural perspectives (Anderson, 1999; Griffiths, Yule & Gartner, 2011; Nisbett, 1993).

Perceptions of Legitimacy: Cause and Effect

Although much research has established that a relationship appears to exist between perceptions of justice and noncompliance with formal methods of social control, the precise nature of the relationship remains unclear.

Scheurman (2013) has suggested that the relationship between perceived injustice and crime can be explained by General Strain Theory. Using data obtained from a survey of college undergraduates, she found that those who interpreted a hypothetical scenario as containing elements of procedural, distributive, and interactional injustice were more likely to feel anger and report an inclination to respond to the scenario in a violent or criminal fashion. Thus, as suggested by General Strain Theory, a stimulus that promotes anger or other negative feelings (such as perceived injustice) might motivate the commission of a criminal act to restore justice or serve as a form of retaliation.

Wolfe (2010) has also examined the effect of individual differences on perceptions of legitimacy, particularly self-control. Low self-control has been linked to, among other things, criminal offending (Gottfredson & Hirschi, 1990; Wolfe & Higgins, 2009) and an inability to be easily deterred by the threat of punishment (Nagin & Paternoster, 1993; Piquero & Pogarsky, 2002). Using a convenience sample, Wolfe (2010) surveyed college students and collected data on variables, including views of police legitimacy and procedural justice. Analysis revealed that indicators of self-control were negatively correlated with views of procedural justice and police legitimacy. Additionally, his research concluded that low self-control and procedural justice interacted to influence evaluations of police legitimacy. Therefore, even when officers behave with great procedural fairness, offenders' perceptions of legitimacy may be mediated by low levels of self-control.

Experiences with the criminal justice system may frequently lead to perceptions of reduced legitimacy. Using several national data sources and interviews, Lee, Porter, and Comfort (2014) measured the prevalence of assorted attitudes toward the American criminal justice and political systems across different populations. In a sample of women who had been incarcerated at some point in their lives, nearly half reported that they had "little or no respect" for police officers, probation officers, and correctional authorities; nearly half reported that they do not believe the criminal justice system treats people fairly; and 40 percent stated that they believe a "medium amount" to "great deal" of people are wrongly convicted. By contrast, a 2011 Gallup poll of the general population indicated that only 29 percent of Americans had little to no confidence in the criminal justice system (Saad, 2011).

Perceptions of justice and legitimacy may form even in the absence of direct contact with law enforcement officials (Tyler, 1990; Tyler & Huo, 2002). Views of the criminal justice system may be shaped, for example, by witnessing the imprisonment of a family member. Lee, Porter, and Comfort's (2014) research revealed that survey respondents who reported that a parent had ever been incarcerated were significantly less likely to vote in the last presidential election and more likely to feel discriminated against; they also reported less trust in the government than respondents who had never experienced the incarceration of a parent. Moreover, as the authors explained, these views may be promulgated throughout succeeding generations of families, feeding an ongoing cycle of distrust in the government and lack of willingness to participate in prosocial civic activities. This is particularly troubling given the number of children in the United States who experience the incarceration of a parent; Glaze and Murraschak (2010) report that in 2007, approximately 1.7 million children (2.3 percent of the juvenile population in the United States) had a parent incarcerated. In some segments of the population, rates of parental incarceration may be particularly high; African-American children are more than six times more likely to have an incarcerated parent than white children (Wildeman, 2009). Several observers (Clear, 2007; Uggen & Manza, 2002; Weaver & Lerman, 2010) have suggested that this ongoing disenfranchisement of a large segment of the population has served to erode trust in the criminal justice system.

Taking a macro-level perspective on the effect of low legitimacy, in his 1998 book *Losing Legitimacy*, Gary LaFree examined the impact of decreased perceptions of legitimacy on national crime rates. LaFree linked rising crime rates in American history with indicators of decreasing perception of the legitimacy of assorted institutions. Among other things, he noted that increasing divorce rates (symptomatic of decreasing views toward traditional family structure) and decreasing rates of voter participation in national elections (decreasing interest in politics) were linked with increases in the rates of assorted crimes.

Legitimacy as a Component of the Change Process

A substantial body of research has suggested that legitimacy is enhanced when people believe that authorities act justly. Much of this work has been done within the policing context. In a widely-published 2003 study, for example, Sunshine and Tyler sampled residents of New York City and surveyed them on whether or not they believed the police act in a procedurally-just fashion as well as their perceptions of the effectiveness of the police. They also asked citizens to report how likely they might be to cooperate with the police in a variety of scenarios. They found that perceptions of legitimacy were positively associated with self-reported tendencies to cooperate with the police and were a stronger predictor of such self-reported cooperation than perceptions of the effectiveness of the police.

The importance of perceptions of legitimacy could be equally applied to other professions, however, such as those within the substance abuse and mental health disciplines. Prior research, for example, has concluded that mental health and substance abuse treatment are more effective when participants feel that they have some say in the course of therapy. In a 2013 study based on a sample of criminal defendants admitted into a mental health court and diversion program in New York, Pratt et al. observed a negative correlation between perceptions of coercion into treatment and perceptions of recovery. They also observed a significant correlation between “negative pressure” to enroll in substance abuse treatment and repeated involvement in the criminal justice system throughout a 12-month follow-up period. Other studies have reached similar conclusions (Christy, Boothroyd, Petrila, & Poythress, 2005; Connors, Carroll, DiClemente, Longabaugh, & Donovan, 1997;

Krupnick et al., 1996; Langer & Rodin, 1976; Raue, Goldfried, & Barkham, 1997).

The opportunity to have some say in the process at hand appears critical in many social interactions. Thibault and Walker (1975) recognized this in distinguishing *process control* from *outcome control*. Whereas process control refers to control over the manner in which arguments are presented, outcome control refers to control over who makes the final decision in resolving a dispute. They concluded that allowing disputants some degree of process control produced the strongest assessments of procedural justice, even more than when disputants were afforded some outcome control. As summarized by Monahan et al. (1995), “...people value having ‘voice,’ the chance to state their views, and ‘validation,’ having their views taken seriously, even when their statements do not determine the decisions made about them” (p. 257). Indeed, emphasis on the collaborative nature of the therapeutic relationship is one of the hallmarks of cognitive-behavioral therapy (Beck, 1995).

This point should be carefully considered by probation officers. It is perhaps noteworthy that in a 2005 study, Clark observed that officers frequently “out-talk” offenders during office visits, and often by a ratio of roughly 3 to 1. Such behaviors limit the offender’s voice in the process, quite possibly degrade his perception of procedural justice, and ultimately may reduce his view of the legitimacy of supervision altogether.

Improving Legitimacy in Community-based Corrections

To improve perceptions of legitimacy in community-based corrections, I offer the following specific recommendations:

- 1) When offenders commence supervision, officers should engage them in discussion of their criminal backgrounds, gathering information on the motives behind particular crimes and the offender’s perception of the punishment imposed. Not only does this serve the basic purpose of ascertaining offender needs, but it allows the officer to construct some understanding of the offender’s perception of the legitimacy of law enforcement, the courts, and the correctional system in general. From this, the officer can begin to discuss with the offender the harmful consequences of his or her actions to self, family, and community, assisting the offender in developing an appreciation for the illegality of the convicted behaviors. When offenders realize the

harmfulness of their crimes and the need for law enforcement intervention to prevent and control crime, they can begin to view the system with increased legitimacy.

The goal of enhancing offenders’ perceived legitimacy of the criminal justice system may be difficult, particularly when probation officers work in communities with historically strained relations with the local police department. Moreover, efforts to impress upon offenders the viewpoint that they are being treated fairly given the illegal nature of their activities is challenging when one considers that up until commencing supervision, offenders have likely not been afforded an opportunity to discuss with authorities—openly and honestly—the circumstances that led them to commit crimes and the precise nature of those crimes. The American legal system, after all, encourages *challenges* to authority; it is inherently adversarial in nature. Because the system is designed to afford Constitutional protections to those accused of criminal acts, the state and the defendant are necessarily pitted against each other in adversarial proceedings during which it is generally in the best interest of the accused to maintain his or her innocence and challenge the state’s position whenever possible. While convicted persons in the federal system can ultimately be rewarded with a reduction in their sentencing exposure by accepting responsibility under the terms of the Federal Sentencing Guidelines, anecdotal evidence suggests that statements accepting responsibility are often perfunctory in nature and frequently prepared by defense counsel rather than the defendant himself. Virtually from the moment of arrest through to adjudication, offenders generally find it advisable not to discuss the motivation behind and their involvement in crimes.

As a result, they typically will not have engaged with officials in a frank and constructive discussion of how they make decisions, why their behaviors are harmful, and why particular penalties are imposed. In many cases, supervision presents the first opportunity for such discussions to occur. Probation officers’ efforts to enhance the perceived legitimacy of supervision would therefore benefit from an examination of an offender’s particular motivation to commit crime and discussion linking his decision to break the law with the resulting negative consequences, both to himself and the community as a whole.

- 2) In furtherance of the first recommendation outlined above, probation departments should, whenever possible, make available

cognitive-behavioral and other counseling interventions designed to enhance decision-making skills and encourage offenders to develop a greater understanding of the immediate and long-term consequences of their actions. There are many such programs available. The popular cognitive-based program *Thinking for a Change* (Bush, Glick, Taymans, & Guevara, 2011), for example, contains exercises that specifically require offenders to consider the consequences of their actions to themselves and others. Another popular program, *Moral Reconation Therapy*, emphasizes decision-making within a moral context (Little, 2000). To the extent that a lack of self-control affects perceptions of legitimacy, cognitive-behavioral programs may also help offenders develop better impulse control.

3) Throughout supervision, officers should emphasize the collaborative nature of the process. Psychologists have long noted the importance of a collaborative relationship between therapists and clients in improving treatment outcomes (Horvath & Luborsky, 1993; Norcross, 2011). Indeed, allowing clients to have some say in the course of their treatment is one of the fundamental characteristics of cognitive-behavioral therapy, the treatment model thus far determined to be most effective in dealing with offenders. Forging a therapeutic alliance is as important in the relationship between a probation officer and offender as it is in the relationship between a therapist and voluntary client. Skeem, Eno Louden, Polaschek, & Camp (2007), in developing a measure of the quality of relationships between probation officers and involuntary clients, found that elements of caring were highly blended with perceptions of fairness. This finding underscores the suggestion that compliance with directives depends in no small part on one's assessment of the motives of authority figures and overall perception of procedural justice. Additionally, clients are more likely to comply with directives if they realize the benefit to them in doing so, rather than simply feeling obligated to comply due to external pressure (Christy et al., 2005; Pratt, Koerner, Alexander, Yanos, & Kopelovich, 2013). To this end, officers should make every effort to carefully explain to offenders how their compliance with assorted directives can benefit them in both immediate and long-term ways. Moreover, in formulating plans for tasks to be completed, officers should allow offenders to have some (reasonable) say in structuring an agenda. This allows offenders

to take some ownership of the change process and become more fully invested in outcomes.

4) Immediately upon commencement of supervision, officers should clearly outline to offenders the terms of supervision, reasons for the conditions, and potential penalties for infractions. Although it might seem obvious that officers should explain the terms of supervision at the outset, care should be taken to ensure that this is more than simply a perfunctory review of conditions. Officers should make it clear that the terms of supervision have been developed with specific reasons in mind and explain those reasons in detail. Additionally, while probation officers obviously cannot anticipate every possible probation violation and speculate as to what particular sanctions may be imposed, it would be beneficial to discuss typical examples of violative conduct and the possible resultant penalties. As noted, offenders are more likely to abide by conditions if they view them as just and reasonable.

5) In investigating alleged violations of supervision, officers should encourage offenders to provide their own account of the misconduct and explain the motivations and thought processes behind their behavior. This not only facilitates admission of misconduct (which is obviously helpful from a legal perspective), but allows officers to gain valuable insight to the facts and circumstances surrounding the violative conduct. Moreover, by discussing noncompliance in a non-confrontational manner, officers foster increased perceptions of procedural justice and legitimacy.

6) In responding to violations, officers should clearly explain the reasoning behind the construction of particular sanctions. As noted, offenders will view the system with increased legitimacy if they view sanctions as well-reasoned and tailored to their specific circumstances as opposed to being arbitrary or grounded in some ill intentions on the part of the probation officer.

7) Officers should strive to form trusting relationships with family members of offenders and other collateral contacts. Consistent with the research that people are more likely to talk to and cooperate with police if they believe that the police are procedurally fair and have good intentions, probation officers can develop good working relationships with collateral contacts by emphasizing that they have the offender's best interests at heart. Not only does this encourage collateral sources to communicate concerns to the probation

officer, but it fosters the growth of a network of informal social support around the offender by getting those collateral contacts to "buy in" to the supervision process and exert prosocial influences on the offender.

8) Finally, the community-based corrections organization itself may benefit from taking steps to enhance perceptions of legitimacy among employees. Much prior research has suggested that supervisors who employ a participatory management style reduce stress felt by employees, improve workers' job satisfaction, and reduce turnover. Lee, Joo, and Johnson (2009), in surveying federal probation officers, found that elements of participatory management played a significant role in reducing employee stress and enhancing job satisfaction, both of which were key determinants of turnover intention. For example, managers can engage in participatory management by following through on promises made to employees, inviting officer input in important decisions, making decisions in a transparent fashion, clearly explaining how and why decisions are made, and rewarding good work (Byrd, Cochran, Silverman, & Blount, 2000; Joy & Witt, 1992; Lambert, 2003; Lambert, 2010). By doing so, they enhance perceptions of procedural justice within their organizations. While efforts to increase distributive justice (in the form of salary increases and promotional opportunities, for example) may not be feasible in times of economic constraints, perceptions of procedural justice can always be enhanced in these intangible ways.

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