CHAPTER 2

Legitimacy and Regulatory Compliance

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1   Introduction

In *The Problem of Order*, Dennis Wrong argued that a challenge that had always confronted all societies was the challenge of aligning individual private interests with those of the collective (Wrong 1994). Herein lies the problem of compliance, and it follows that, first, all social groups—whether they are financial institutions, police departments, or, even organised criminal entities—always demand that their members obey a body of more or less defined regulations. Second, and this is implicit in the first, compliance can never be taken for granted; there are always forces of different intensity that encourage individuals to act in ways that deviate from what is required of them. Third, acts of non-compliance are not created equal; they are highly variable in the seriousness of their impact on individuals, organisations, and wider society. For example, in November 2012, Mr. Kweku Adoboli was convicted for what the presiding judge, Mr. Justice Keith, described as 'fictitious hedging trades' that caused the loss of $2.25bn to UBS[1] (*R. v Kweku Adoboli*, 2012). The 2008 global financial crisis, for which Mr. Adoboli was a mere footnote, resulted in unemployment, and housing and political crises, which persist until today.[2] There are also countless cases of corporations found

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complicit in facilitating tax evasion and money laundering, even by (suspected) terrorist and organised criminal networks.

Consequently, questions about compliance have attracted intense attention in recent years. Various national and international regulations against money laundering, corruption, and tax evasion have either been enacted or strengthened (Allfred et al. 2017; Ferran 2012). Understanding why people break rules has therefore never been more urgent. But it is a task that has long concerned criminologists who have sought to understand and explain why people break rules in different settings (e.g. Hirschi 1969; Wikström et al. 2012). Bottoms (2002, see also Chapter 1 in this volume) identifies four principal mechanisms of compliance: *habit* by which compliance happens because people see obedience as the only viable cause of action (Wikström et al. 2012); sometimes compliance arises from (boundedly) rational decision-making processes in which people consider the potential costs and rewards of lawbreaking (*instrumental or prudential compliance*). It also sometimes happens that *structural constraints*—such as difficulty in accessing vulnerable targets or the means of criminal conduct—prevent people from acting out their criminal propensities. Finally, Bottoms identifies *normative* mechanisms according to which compliance arises from perceptions that laws or systems of authority are morally valid. As Hirschi put it, "crime occurs because there is *variation* in the extent to which people believe they should obey the rules of society and, furthermore, that the less a person believes he should obey the rules, the more likely he is to violate them" (Hirschi 1969, p. 26). A sub-type of normative compliance is legitimacy, which is the focus of this chapter.

Legitimacy is the soul of all social systems, from relatively simple entities to nation states and multinational corporations. Without legitimacy, these systems are moribund. Sherman (1978) wrote in *Scandal and Reform* that scandal was a "mighty weapon" that could both topple governments and instigate change. The same can be said about legitimacy: as a mighty weapon, legitimacy is double-edged. With it power-holders can procure a certain quality of compliance and cooperation from power-audiences. However, claims about illegitimacy are almost always the grounds for resistance, sabotage, defiance, and non-compliance. As Boulding (1967) noted, when institutions lack legitimacy, they fall with such rapidity that there is hardly time for investigation (see also, Sparks 1994). The purpose of this chapter is threefold: first, it offers an overview of legitimacy theory. Its key concern here is to lay out the meaning of legitimacy and some of its most essential features. Second, it discusses

Bottoms and Tankebe's (2017) fourfold dimensions of legitimacy: namely lawfulness, procedural justice, distributive justice, and effective use of authority. Third, it reviews some of the empirical literature on the potential role of legitimacy in nurturing and sustaining compliance within organisations. As the review will make clear, legitimacy matters for encouraging compliance with laws and regulations.

2   What Is Legitimacy?

Legitimacy theory is founded on a view of human actors as "norm-users, whose interactions with each other depend on mutually recognisable patterns that can be articulated in terms of right versus wrong conduct, or of what one ought to do in a certain setting" (MacCormick 2007, p. 20). Given this, an attempt to explain people's reactions to regulations starts with considerations of the normative status of those regulations (Beetham 1991). By normative status, we mean the legitimacy of regulations and those whose duty it is to ensure compliance. Legitimacy itself is the subject of varied definitions. According to Boulding (1967, p. 299), legitimacy refers to the "acceptance of an institution or an organisation as right, proper, justified and acceptable". For Beetham (2013, p. 19), legitimate is "power that is *acknowledged as rightful* by relevant agents, who include power-holders and their staff, those subject to the power and third parties whose support or recognition may help confirm it". Both definitions have the advantage of drawing attention to a central feature of legitimacy: the notion of "right" or "rightful" speaks to the "inherently social" nature of legitimacy (Reus-Smit 2007, p. 159).

How best can we think about or understand legitimacy? Drawing on work by Max Weber (1978), Bottoms and Tankebe (2012) outlined a theory of legitimacy as dialogue. As they put it:

> legitimacy needs to be perceived as always dialogic and relational in character. That is to say, those in power (or seeking power) in a given context make a claim to be the legitimate ruler(s); then members of the audience respond to this claim; the power-holder might adjust the nature of the claim in light of the audience's response; and this process repeats itself. It follows that legitimacy should not be viewed as a single transaction; it is more like a perpetual discussion, in which the content of power-holders' later claims will be affected by the nature of the audience response. (2012, p. 129)

A number of issues flow from this view of legitimacy as a continuous dialogue. *Primus*, such a view invites an enquiry into the nature of dialogues. Brownlee (2011) has outlined five "conditions for dialogue". First, a dialogue requires "reciprocity between the parties … For a dialogue to occur, each party must be an active participant in the interaction in that each must intentionally play the dual roles of communicator and receiver" (pp. 57–58). Legitimacy as perceived by power-audience has little to do with what power-holders claim about themselves; it flows from power-audiences. As we shall see below, the condition of reciprocity relates to a key component of procedural justice which requires that those in positions of authority—for example, supervisors—explain and listen to the views of employees. Second, dialogues are "more sustained and extensive interactions" (p. 58), hence, never to be understood as episodic transactions. As she put it, dialogues are not "simple call and response or an exchange of threats, or wordless meeting of minds". Third, the parties in a dialogue recognise each other's contributions and are willing to adjust their positions vis-à-vis those contributions. Even where they are not entirely civil (Bottoms and Tankebe 2013) dialogues carry a symbolic message of a desire to reach common understanding (Brownlee 2011). Four—and this flows from the first condition—dialogue connotes fairness and equality such that "each has an equal right not only to speak when she wishes (provided that she respects the equal rights of the other), but also to be heard and to be understood" (p. 58). Finally, genuine dialogue is uncoerced, not staged, manipulated, or conducted under duress. Unless there is voluntary engagement, what the parties to a power relationship communicates loses credibility.

Secundus, talk of legitimacy-as-dialogue implies the primacy of context. Dialogues occur in certain cultural, political, and economic contexts, which contexts shape directly or indirectly the nature, direction and outcome of the dialogues. From this point of view, an indispensable starting point for any study of legitimacy is knowledge of the historical and societal realities in which power-holders seek to establish and maintain legitimacy, and how these realities define the expectations and responses from audiences. We cannot fully understand narratives and counter-narratives about legitimacy in a vacuum, and it is for this reason that Beetham (1991) writes about "legitimacy-in-context". Bottoms and Tankebe (2017, p. 88) put it this way: "legitimacy dialogues are always

contingent on specific features of the place and time in which they occur and are influenced by the history and culture of that place and time; and this means that the specifics of legitimation and legitimacy can be very variable".

Tertius, a dialogue implies the active involvement of two or more actors. This immediately contrasts it with a monologue, which the *Oxford English Dictionary* defines as "a dramatic composition for a single performer; a dramatic entertainment performed throughout by one person". Those who are subject to legitimate power cannot be portrayed as automatons or mere spectators passively observing the actions of power-holders, nodding to their performances. As Reus-Smit (2007, p. 159) put it, "auto-legitimation is an oxymoron – an actor can jump up and down, declaring loudly that his or her actions are legitimate, but if nobody accepts this, then they are not correctly described as such, even if he or she is making a legitimacy claim". It follows that we cannot speak of the facticity of legitimate power in the sense that the fact that a person is vested with power necessarily imbues that power with legitimacy (cf. Mbembe 2001, p. 3). Therefore, in the study of legitimacy-as-dialogue, we are simultaneously concerned with the active roles of *power-holders* and *power-audiences*. Thus, Bottoms and Tankebe (2012, 2013) differentiate between power-holder and audience dimensions of legitimacy—the former describes the belief on the part of power-holders (e.g. managers and supervisors) that their role and authority is morally acceptable to them. Audience legitimacy, on the other hand, concerns judgements by those subject to authority that the system of authority or those exercising power have the right to that power.

Quartus, when our focus is on organisational legitimacy, we need always to differentiate between *internal* and *external* legitimacy (Sparks 1994). Internal legitimacy concerns legitimacy dialogues between management and employees. Externally, there are multiple audiences making sometimes conflicting legitimation demands … governments, legislators, and regulators, and wider heterogenous public (Beetham 2013). The relationship between organisations and their institutional and individual actors is variable. However, as institutional theorists have shown, there are "both formal and informal pressures exerted on organizations by other organizations upon which they are dependent and by cultural expectations in the society within which organizations function" (DiMaggio and Powell 1983, p. 150). As Suchman (1995) points out,

the heterogeneity of institutional environments makes it difficult to build and sustain legitimacy; as such difficulty persists, organisations become vulnerable to the negative consequences of unexpected events, what Taleb (2007) calls "black swan events". This means that whether in dealings with diverse audiences internal or external to an organisation, a key test for power-holders concerns how to navigate and respond to legitimacy pressures in their institutional environments.

3   MECHANISM FOR LEGITIMISING ORGANISATIONS

According to Bottoms (see Chapter 1), "when explaining social phenomena, we need to pay special attention to *social mechanisms*"; that is to say, to account for why those social phenomena happen. A question that naturally, therefore, arises from our discussion so far concerns the mechanisms that organisations can use to build and sustain legitimacy. The term *legitimation* is usually used to refer to this process of seeking to cultivate, sustain, and reproduce a claim to the rightful exercise of authority. Legitimacy—that is, "an attribution conferred on a power-holder by his or her audience(s), acknowledging that he/she [has] the right to rule" (Bottoms and Tankebe 2013, p. 64)—may be thought of as the "outcome" of the process, even though this outcome is fluid (Dunn 2013). Our concerns in this section are therefore with legitimation mechanisms. In their theory of legitimacy, Bottoms and Tankebe (2012, 2017) proposed four such mechanisms for establishing and maintaining audience legitimacy: lawfulness; procedural justice; distributive justice; and effectiveness.

Lawfulness

In modern societies, the starting point for a study of legitimacy is law. Beetham (1991) considers it "the first and most basic level of legitimacy". It concerns not only the legal source of power, but also the extent to which those in authority such as compliance officers act in accordance with established rules. Thus, in a study of law's legitimating role, we are concerned with matters related to the "rule of law", which rests on principles of due process and equality (Allan 2001). The law must also be applied prospectively, which allows those who are subject to a given order to know in advance the kinds of sanctions that are to be applied should non-compliance occur (Tamanaha 2004). Following Aristotle's *negative approach*,[3] Bottoms and Tankebe

(2012, pp. 137–138) argue that we can better understand the role of law in legitimation by looking at those instances where power-holders have been found to break rules. Thus, when compliance officers engage in misconduct and bankers violate financial regulations, they undermine a key pillar of their legitimacy. Mathiesen (1965) showed, from his study in a Norwegian prison, that perceived illegality can attract "censure" from power-audiences as they seek to point out to power-holders the inherent contradictions between claims and behaviour.

Thus, when we think about the practices of institutions and seek to question the rightfulness of such practices, a key judgement point is the law. Have they acted in accordance with the spirit and letter of the law? It is also the case that institutions often seek to defend themselves against criticisms by saying that they have not broken any laws. However, law per se offers insufficient grounds for legitimation. Simply because an organisation can demonstrate that it has acted strictly according to a given regulation, may not be enough to prevent it from being viewed as illegitimate. The reason is this: laws do not always reflect prevailing social norms (Tamanaha 2001; Arsovska and Verduyn 2007). Even if laws reflected social norms at a particular time, changes in law can sometimes lag behind changes in social laws, depriving law of its moral foundations. Conversely, some social norms can be stubbornly resistant to change such that changes in law may outpace change in social norms. It is in this sense that Taleb (2018, p. 55) observes that "laws come and go; ethics stay". It is also sometimes the case that law is imposed on parties in a power relationship without any recourse to culture and values of that society or group. As Gouldner (1954, pp. 184–185) found in his study of a mining plant in the United States, employees did not believe that "management has the right to institute any kind of rule, *merely because they have the legal right to do*" *(emphasis in original)*.

The inadequacy of law for establishing legitimacy underscores the importance of the other dimensions of the Bottoms and Tankebe model. This leads us to the second of their legitimation mechanisms: ***procedural justice***.

Procedural Justice

Procedural justice may be defined as the perceived fairness of the processes used in day-to-day decisions and exercise authority

(Sunshine and Tyler 2003). According to Tom Tyler, procedural justice has two dimensions: *quality of decision-making* and *quality of treatment* (Tyler 2003). Quality of decision-making has various specific sub-elements: voice/participation, impartiality, trustworthy motives, and correctability. The "voice" dimension captures the extent to which those in positions of authority allow people, whether employees or clients, to express their points of view when making decisions. It means decision-makers offer people an opportunity to ask questions, are seen to listen actively, and taking account of people's views in the decisions or actions. One of the ways decision-makers seek to invite people's views is by requesting feedback or suggestions for improvement.

Impartiality denotes the absence of bias or discrimination in decision-making. It requires that decision-makers are "unmoved by certain sorts of consideration – such as special relationships and personal preferences… to treat people alike irrespective of personal relationships and personal likes and dislikes" (Cupit 2000, cited in Rothstein 2011, p. 230). It is often mistaken for neutrality; however, as Rosanvallon (2011) points out, unlike neutrality which means "detachment or even refusal to intervene", impartiality requires active engagement. To act impartially is to apply rules consistently, explaining how rules are being applied and why, explaining how decisions have been reached, and referring to rules and evidence rather than personal views (see Mazerolle et al. 2013).

The notion of "trustworthy motives" refers to "inferences about the intentions behind actions, intentions that flow from a person's unobservable motivations and character" (Tyler and Huo 2002, p. 61). The reference to character is important here because it gives people some indication as the commitment of power-holders to social norms that the parties in a power-relationship share. Do the demeanour, actions, and inactions of power-holders exemplify these shared norms? Unless people are convinced that the motives of those in authority are sincere and that they have the interests of people at heart, the possibility of establishing a normative relationship is remote (see Ullmann-Margalit 2017, Chapter 11). The procedural justice literature suggests that power-holders can convey their good motives by being consciously approachable and not intimidating, being sincere and caring (e.g. the tone, questions about the person) by excluding personal feelings and beliefs from decision-making, by listening to and discussing people's views, and by explaining reasons and purpose for decisions (see Mazerolle et al. 2013; Tyler and Huo 2002).

Quality of treatment concerns the need to treat people with appropriate dignity and recognition *as a persons*, including (where relevant) recognition of their particular needs and characteristics. Bottoms and Tankebe (2012, p. 145) describe this component as the "more personal" of the elements, focused on "whether the decision-maker treats the subject in a true sense as a human being, with needs for dignity, privacy, respect for his or her moments of weakness, and so on". Signals of respect and disrespect are culturally variable, such that what conveys respectful treatment among members of a particular religious or ethnic background might be viewed as disrespectful among those of a different group. However, the evidence from procedural justice literature suggests that basic courtesy, showing that people and their rights are important, taking issues raised seriously and taking time to discuss them, and providing the right information at the right time are some of the ways to convey respect (see Mazerolle et al. 2013). According to Honneth (1996, pp. 131–132), "because the normative self-image of each and every human being … is dependent on the possibility of being continually backed up by others, the experience of being disrespected carries with it the danger of an injury that can bring the identity of the person as a whole to the point of collapse". Consequently, a great deal of resentment and defiance can arise from actual or perceived disrespect; consequently, compliance officers seeking to establish legitimacy make their task easier by creating a work environment that prioritises respectful and dignified relations.

Distributive Justice

Distributive justice and procedural justice are often embraced in the broader notion of organisational justice (Colquitt et al. 2001). According to Aristotle, distributive justice is: "Exhibited in the distribution of honours, property, or anything else which is divided among the members of the community. For in such matters men (sic) may receive shares that are either equal or unequal to the shares of others" (cited in Johnston 2011, p. 68).

Johnston (2011) has noted that the terms translated as "equal" and "unequal" are *isos* and *anisos*, and are more accurately translated as "fair" and "unfair". Consequently, distributive justice concerns the fairness in the distribution or allocation of resources across different persons or groups (Tyler and Fagan 2008; Colquitt et al. 2001). These may take

the form of symbolic or concrete resources (Lerner and Clayton 2011). Symbolic resources include questions of respect, offering a voice and listening. For employees, concrete resources may include salaries and tangible resources for work. However, resources are not only "positive"; there are also "negative" resources such as sanctions or punishment. Here again, questions arise as to the distribution of these negative resources across different persons and groups. Are certain individuals or groups more likely to be the subject of investigations, dismissals, suspensions, or other forms of punishment? When those in positions of power are perceived to use their authority in ways that are discriminatory, they inevitably attract censure and resentment. Hence, we see, for example, the birth of *Black Lives Matter* in the USA as a protest against minorities being disproportionately the target of police violence.

Effectiveness

Effectiveness concerns the ability of institutions to fulfil their mandate. All social systems have specified goals that they seek to achieve. For criminal justice agencies, it is the goal of reducing harms in society and increasing public safety. For financial service regulators such as the UK's *Financial Service Authority*, the Financial Services and Market Act 2000 defines its objectives as building "market confidence", "public awareness", "the protection of consumers", and "the reduction of financial crime". For regulatee corporations, the principal goal is to "produce goals and services that consumers needed and wanted and to make an acceptable profit in the process" (Carroll 1991, p. 41). These goals and the intensity with which they are pursued may differ across time and space, but it remains the case that the effective use of authority towards achieving those goals will be a normative expectation for relevant audiences for these organisations. Thus, Coicaud (2002) argues that every claim to legitimate power requires actual or attempted satisfaction of societal needs, in whatever way these needs might be defined. The implication for compliance officers is that they must be seen to be effective in helping corporations achieve regulatory commitments if they are to retain legitimacy. Compliance officials risk their legitimacy if employees are unsure about their effectiveness in helping these employees navigate ethical dilemmas and in responding clearly to complaints about unethical behaviours.

In conclusion, building legitimacy requires compliance officers to act lawfully, to ensure processes for everyday decision-making are experienced as just, to allocate resources justly across different competing groups and individuals, and to ensure effective use of authority to achieve

organisational mandates. It is not sufficient for compliance officials to have policies that express commitments and intentions to pursue these legitimation mechanisms. Effective legitimation requires the closing of the gap between rhetoric and practice. Employees will form their views about the legitimacy of compliance officials based on direct or vicarious experiences rather than policy pronouncements. According to Tyler (2011, p. 256):

> Every encounter that the public have with the police…should be treated as a socialising experience that builds or undermines legitimacy. Each contact is a "teachable moment" in which people learn about the law or legal authorities.

4 Legitimacy and Employee Behaviour

As we noted above, legitimacy is a problem for all social systems. It is a problem for corporations and their regulators. But the question that these varieties of power-holders are bound to ask is whether there is any evidence to show that legitimacy matters for securing compliance. We have already suggested that "the presence or absence of legitimacy carries large consequences for all parties in a system of power relations" (Sparks 1994, p. 15). The evidence we review here confirm Sparks further claim that "only legitimate social arrangements generate commitments towards compliance on moral rather than just expedient grounds" (p. 15; see also Beetham 1991). Before considering that evidence, an important caveat is in order. It is that legitimacy matters not only for its instrumental value; the structures of leg itimacy are such as to place upon power-holders (e.g. regulators, corporations, and supervisors) a normative obligation to exercise power in accordance with certain principles which are valid in and of themselves (see Tankebe 2009; Watson, forthcoming).

We start with Gouldner's (1954) classic study of mining factory between 1948 and 1951. Although obviously an old study, the findings emerging from the study has clear resonance for regulators seeking to influence the behaviour of regulates today. Gouldner posed the question: "*what is it about bureaucracy* which elicits hostility, fostering tensions within the organization itself or between the organization and the public with which it deals?" (p. 181, emphasis original). Gouldner found that the legitimacy of rules mattered greatly for their compliance either by employees, management, or both. There were rules, such as those against smoking in company premises that were scarcely enforced; indeed, they were jointly violated by employees and managements. When his researchers asked why employees ignored no-smoking signs, one answered as follows:

> Yes, these are not really Company rules. The fire insurance writers put them in. The office seems to think that *smoking doesn't hurt anything,* so they don't bother us about it. That is, of course, until the fire inspector (from the insurance company) comes around. Then as soon as he gets into the front office, they call down here and the *word is spread around for no smoking.* (pp. 182–183)

It was not just the fact of the external origin of the rule that triggered non-compliance. Gouldner observed that what the initiators of the rule had failed to do was to justify it in shared values within the plant. Similar challenges arose in cases where rules or procedures were initiated by either management or employees. Here, Gouldner found that the non-initiating party considered the rule illegitimate and tended to violate it. In other words, in our terms, the initiation and implementation of these rules failed the legitimacy dialogue test, opting rather for arbitrariness. However, this was not the case with safety rules in the plant; here, both parties jointly initiated the rule and felt they could legitimise it in terms of their respective values. The result was high compliance, including formal and informal reward and punishment structures to ensure obedience.

Clearly, Gouldner's findings continue to speak to regulatory compliance today. As the financial crisis and cases of tax avoidance such as that by Google demonstrate, there are important questions not only about compliance or non-compliance per se, but also the quality of compliance that can be expected from regulatees. While the challenges are clearly multifaceted, a message from Gouldner's evidence is that if regulators are to avoid non-compliance or "creative compliance" (see Chapter 1 by Bottoms), they need to take seriously the task of legitimising the making and enforcement of regulations. This, as we have discussed above, involves a continuous dialogue between regulators and their regulatees. The same is also true for management as they seek to encourage compliance with internal and external regulations.

More recently, various quantitative studies from diverse organisational settings show that legitimacy matters for compliance. Gobena and Van Dijke (2016) analysed survey data from 231 small and large business owners in the Ethiopian to establish the factors that encourage what they called "voluntary tax compliance". Two key findings emerged from their data; first, "procedural justice was associated with voluntary

tax compliance only when legitimate power of the tax authority was low and when coercive power of the authority was high" (p. 31). Second, coercion was only important in securing "forced tax compliance". These findings indicate that treating regulatees fairly makes a difference to the quality of compliance that regulators can expect from them (see also, Kogler et al. 2013; cf. Ariel 2012).

Other studies have examined legitimacy and workplace rules. Feldman and Tyler (2012) conducted a web survey of 599 Israeli employees about the work experiences to establish whether such experiences explained any differences in compliance with workplace rules. Compliance was measured with items such as "How often do you comply with organizational instructions and regulations?" and "how often do you use company rules to guide what you do on the job?" (p. 55). The results showed that where employees perceived that performance evaluation procedures were legal and that they were offered an opportunity makes an input during performance review, the likelihood of compliance with rules increased. As the authors concluded, "evaluations of the procedural justice of performance appraisal hearings more strongly influenced judgments of overall workplace fairness, perceptions of management legitimacy, and employee rule-adherence behavior when employees believed fairer workplace procedures were required by law" (Feldman and Tyler 2012, p. 46).

In the context of law enforcement, evidence from various studies supports the importance of legitimacy within organisations. For example, Tyler and his colleagues collected survey data from 209 law enforcement officials and 210 military officers about organisational legitimacy and rule-adherence (Tyler et al. 2007). The results showed that experiences of fair procedures and a perception that rules align with one's values predicted the likelihood that people will follow job requirements, follow organisational rules, and defer to policies. Similarly, Bradford and his colleagues surveyed 1043 police officers from Durham Constabulary and reported that perceptions of organisational justice were associated with greater self-reported compliance (Bradford et al. 2014; see also Bradford and Quinton 2014; Tankebe and Meško 2015). The implication is that building legitimacy with organisations can encourage "self-regulation" which, in turn, may reduce misconduct and unethical behaviours by regulatees.

5   Conclusion

Let us conclude our discussion with a few observations. First, we have seen that legitimacy requires compliance officers to act in accordance with regulations and laws, to demonstrate effectiveness in achieving their core mandates, to employ procedures that are fair to employees, and to avoid discrimination in dealing with employees of different social backgrounds or role differentiation. However, experience shows that there are often tensions among these legitimation mechanisms; the quest to act effectively might come up against legal and fairness requirements (see Bottoms and Tankebe 2017). How those tensions, even conflicts, are resolved can often make the difference between a scandal that threatens the survival of corporations and the legitimacy health of corporations. The financial crisis of 2008 and Cambridge Analytical show what can happen when officials put narrowly-defined effectiveness targets ahead of ethical obligations.

Second, a key implication of the above and the dialogue view of legitimacy is that the legitimacy of compliance officers is never a given, never a settled phenomenon (Dunn 2013). It is always work in progress, and it is work that is never always smooth and uncontested; it is, as Loader and Sparks (2013) put it an "unfinished business". This means compliance officers cannot engage in what we might term *legitimacy fracking*. By legitimacy fracking, we mean the attempt to secure recognition one's authority through moments of intensive pursuit of legitimation mechanisms. For example, growing evidence that procedural justice builds legitimacy, which, in turn, encourages compliance and cooperation has led some police departments to offer procedural justice training to frontline officers (see Skogan et al. 2015). However, the approach appears entirely managerialist in mindset, with street-level officers and senior officials expecting procedural justice training to yield immediate legitimacy dividends. Such an approach is not true to the nature of legitimacy and neglects the historical processes that have produced the current fraught legitimacy relationships that are the target of the fracking. It is, therefore, important that compliance officers avoid a managerialist mentality when they seek to build or to repair legitimacy. Legitimacy requires a long-term strategy that is fully conscious of the complex and ceaseless nature of legitimacy.

Third, it is tempting but wrong to assume that individual experiences of effective, fair, and lawful exercise of authority by compliance officers can translate seamlessly into favourable judgments of the overall legitimacy of the organisation the officers represent. The reason is that

there is a problem of induction in legitimation, a problem of moving from particular positive experiences to general institutional legitimacy perceptions. In a brilliant paper, Bell (2016) shows how people make exceptions about individual power-holders ("officer exceptionalism"); sometimes, people find officers effective in handling particular problems ("domain specificity"), or they foresee some beneficial outcome in a given situation ("therapeutic consequences"), while, other times, it is in search of protection or to secure leverage with other power-holders ("institutional navigation"). The challenge in building organisational legitimacy is, therefore, the challenge of making individual experiences with compliance officers count for general legitimacy perceptions.

However, these caveats which emphasise the complexity of building legitimacy do not imply resignation; indeed, they rather reinforce the centrality of legitimacy in all spheres of a compliance officer's day-to-day activities. What can corporate managers do to build a legitimacy culture? Tyler (2011) has outlined a number of strategies. First, *the attitude of leaders—tone from the top*. It is indubitable that leaders play a crucial role in shaping the culture within corporations. Therefore, leadership can create a moral climate within corporations that emphasise the principles of legitimacy in all aspect of work, including the work of compliance officers. This may start by the example from leadership at all levels in terms of how they treat ordinary employees. The available research evidence shows that such treatment can affect employee compliance with organisational directives.

A second strategy involves *designing new operational guidelines* (Tyler 2011). Managers could start by mapping out sites of legitimacy deficits; for example, are there particular aspects of work practices—such as promotions and complaints handling—or are there employees in certain departments that are associated with high concentrations of illegitimacy. Operating procedures can be developed for supervisors that mimic the legitimation mechanisms discussed. Third, *employee reward structures* can be restructured to in order to build legitimacy among employees (Tyler 2011). In the specific context of policing, Tyler rightly argues that "if officers believe that their opportunities for advancement, their compensation, and the respect that they will have in the eyes of their leadership are linked to their ability to create legitimacy and motivate cooperation, then they are more likely to engage in procedurally just behavior when on the street". The same might be true for all institutions that aim to establish and maintain the legitimacy of compliance officers.

Notes

1. Sentencing Remarks by Mr. Justice Keith, 20 November 2012. https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/kweku-adoboli-sentencing-remarks-20112012.pdf, accessed 2 January 2019.
2. Chattam House. 2010. https://www.chathamhouse.org/expert/comment/lasting-effects-financial-crisis-have-yet-be-felt, accessed 3 January 2019.
3. Taleb uses the term via *negativa* to mean the same thing; as he defines it, via negativa is "the philosophical principle that we know what is wrong with more clarity than what is right, and that knowledge grows by subtraction" (Taleb 2018, p. 15fn).

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