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## Introduction

Man was born free, and everywhere he is in chains. Many a one believes himself the master of others, and yet he is a greater slave than they. How has this change come about? I do not know. What can make it legitimate?" (Rousseau, *The Social Contract* [1762] 1964, p. 7)

October 12, 2008 was just another autumn day in Toledo, Ohio. And then it wasn't. On that afternoon, Senator Barack H. Obama, II, the Democratic Party's presidential candidate was campaigning in a Toledo neighborhood. A resident, Samuel J. Wurzelbacher, was tossing a football with his young son. No one knew that the stage was set for a historic conversation.

The conversation began innocently enough when the senator asked Wurzelbacher, "What's your name?" Mr. Wurzelbacher answered "Joe" and immediately began telling Mr. Obama his concerns about the senator's tax proposals. Joe, a plumber, said that he planned to buy a plumbing business and remarked that the senator's tax plan would "tax me more" as his income rose.<sup>1</sup> The senator used examples to explain how his plan would have affected Joe's past earnings and

how it would affect his future earnings. Senator Obama explained that he wanted to cut taxes for "those most in need" and pay for the cuts by raising the taxes of those who earned higher incomes. Joe responded by asking if Senator Obama would support a flat (income) tax. At one point in his extended response, Senator Obama justified his plan by saying, "I think when you spread the wealth around it's good for everybody." (See the Appendix for a verbatim transcript of the discussion published by the *Tampa Bay Times*, October 19, 2008.)

The brief exchange between Senator, now President, Obama and "Joe the Plumber" was captured on video and transmitted around the world. Joe became an instant celebrity and, fueled by his newly-gained celebrity, ran for Congress during the 2012 election cycle. He was defeated by a fifteen-term incumbent.

The video recording of the exchange could be titled "A Snapshot of Inequality." President Obama and Samuel Wurzelbacher differ on several dimensions including race, education, occupation, and income. Their discussion reflects long-observed inequalities in interaction between persons of high and low status. High status persons like Senator Obama typically dominate interactions with those of lower status (Bales 1950). Senator Obama used nine times as many words as Joe the Plumber (1027 vs. 114) in their short exchange. Importantly, their discussion centered on income inequality and what, if anything, government ought to do about it. Identity theorists (e.g., Tajfel 1982, and see Callero in this

<sup>1</sup> Senator Obama and Wurzelbacher's discussion rests on the premise that the proposed business would earn more than Joe's current individual income.

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volume) claim that both men's positions on the issue of income inequality are products, in part, of their standings on the dimensions of inequality identified above.

Rousseau would have been interested in the subject of the Obama-Wurzelbacher exchange. He contemplated the ubiquity of inequality and its legitimation 250 years ago. His writings (Rousseau [1755] 1964, [1762] 1964) considered the roles that individuals, groups and governments take in establishing and legitimizing social inequality and stable social orders. Rousseau's questions were not new. They have intrigued critical thinkers for more than twenty-five centuries (cf. Aristotle ([353 BC] 1943, [350 BC] 1908; Plato [390 BC] 1941; Thucydides [431 BC] 1934).

Inequality and its legitimation are the subjects of this chapter but legitimacy processes are given more attention than either inequality or the legitimacy of inequality. I organize the remainder of the chapter as follows: The next section discusses systematic inequality and the problem of order and sets the stage for a discussion of legitimation as an order-creating and order-maintaining process. The third section examines legitimacy and legitimacy processes. It also includes the most detailed statement to date of the multiple-source, multiple-object theory of legitimacy (Dornbusch and Scott 1975; Zelditch and Walker 2003). The fourth section applies Legitimacy Theory to contemporary affirmative action policies and procedures. The application shows how legitimacy processes affect the creation, reproduction and maintenance of orderly systems of hierarchical inequality. It also shows how legitimation crises can arise when social orders compete for legitimacy. The final section offers conclusions and suggestions for future research.

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## Inequality and Legitimacy

Inequality and legitimacy are important topics in several social sciences including anthropology, political science, sociology and social psychology. Yet, there is no consensus on definitions of the terms. Many social scientists use the terms

“difference,” “inequality,” and “stratification” interchangeably, as I have done in the opening paragraphs of this chapter. Many writers leave the terms undefined and the reader is left to infer their meanings from the context. From this point forward, I will try to use the terms systematically. I will mean by *differences* dissimilar attributes of people or groups, the things they own or possess, and the behaviors they enact. I will reserve the terms *inequality* and *stratification* for ranked differences. Finally, I will use “legitimacy” to refer to an element of social reality that is consistent with laws or rules. This working definition will be expanded and elaborated below.

Inequality is multidimensional. Individuals and groups differ on a variety of dimensions but some differences garner more attention from social scientists than others. Social scientists give special consideration to differences that connote superiority and inferiority (Parsons 1940). They have also devised several ways of classifying differences. Rousseau ([1755] 1964) identified two types of inequality—*natural* and *moral* inequality. Parsons ([1953] 1964, p. 389), writing two centuries after Rousseau, identified *qualities*, *performances* and *possessions* as three dimension on which individuals and groups are ranked. There is some overlap in their categories.

Rousseau meant by natural inequalities biological or physical differences that are established by nature and exist independently of an individual's social relationships. Examples include unranked, categorical characteristics like sex, eye color and skin color.<sup>2</sup> Using the terminology introduced above, such distinctions are classified as differences. Other natural inequalities include differences on ordered dimensions like age or height. Moral inequalities are ranked differences that are established by convention or

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<sup>2</sup> Color can be measured quantitatively and skin color exhibits a tremendous range from very dark to very light or almost no pigmentation. Skin color is used as a primary marker of race or ethnicity in many societies but most classification schemes use poorly-defined categories (e.g., black, brown, white, etc.). Importantly, pigmentation varies so greatly *within* race and ethnic groups that it is essentially useless as an identifier (Jablonski 2004).

as a consequence of social relations (e.g., wealth, social prestige and power).

Writing a century before Comte ([1865] 1957) coined the term “sociology,” Rousseau also recognized that the two “species of inequality” are often connected. As an example, groups use a congeries of initially unranked natural characteristics (e.g., skin color and hair texture) to create race categories that are ranked hierarchically (i.e., converted to moral inequalities).<sup>3</sup>

Parsons classified characteristics like sex and height as qualities. They are attributes of individuals or groups and include unranked physical differences (i.e., natural inequalities) as well as clusters of physical characteristics that groups have chosen to rank hierarchically (i.e., natural characteristics that are redefined to establish moral inequalities). Among other qualities, President Obama and Joe the Plumber are differentiated on the socially constructed characteristic of race.<sup>4</sup>

Performances are features of a person’s behavior. Scores on the Scholastic Achievement Test and academic degrees are performances that reflect intellectual skill and achievement. President Obama is a university graduate with multiple degrees whereas there is no record of Samuel Wurzelbacher earning a post-secondary degree. Social conventions also assign superior and inferior rank to possessions (i.e., objects that individuals possess or control). Possessions can be ranked according to their use and symbolic values. A 2012 Lamborghini Aventador and my aging Toyota can be used for transportation. However, the symbolic or status value of the former is much greater than that of the latter. President Obama’s wealth and the material possessions that accompany it are well-documented. One can presume that Wurzelbacher’s possessions reflect his more modest economic means.

<sup>3</sup> The social construction of hierarchical rankings on categorical and ordinal differences like height, skin color or sex is discussed below and in other chapters in this volume. (See chapters by, Ridgeway and Nakagawa, and Wilkins, Mollborn, and Bó.)

<sup>4</sup> In keeping with the subject matter of this volume, it is more accurate to claim that the two men have different racial identities.

Parsons ([1953] 1964, p. 390) recognized that rankings on one dimension can spread to or affect rankings on other dimensions. Individuals use rankings on performances or possessions to attribute qualities (characteristics) to individuals who enact performances or control possessions. Conversely, they use individuals’ qualities to make inferences about their performances and the things they possess. Parsons’ observation has important implications for the social psychology of inequality, which is concerned with the relationship between group level inequality and individual inequalities.

Inequality is also a multilevel phenomenon; it is found at every level of social organization. The range of social units that exhibit inequality and the number of dimensions on which it occurs are impressive. But there is more. In integrated social systems, inequality at one level of social organization can affect—and typically does affect—inequality at other levels.

Finally, inequality is a source of tensions and conflicts that threaten social stability (Tajfel 1982). Plato ([390 BC] 1941) asserted that inequality “causes hatred and war” with good cause. Those who occupy the lower stations in life are motivated to improve their positions. But inequality is a relationship. Any action that improves a person’s position improves it *relative to* some other person or group. In that regard, a person’s mobility or prospective mobility may be considered a threat to some other’s position (Blumer 1958). Conversely, threats to the status quo motivate higher ranking individuals to take actions that reinforce their higher standing.

The interests that motivate those who have lower social standing generate a second conflict of interest. On one hand, they have an interest in trying to improve their standing without regard to the consequences for their similarly placed peers. On the other hand, they can join with peers to take collective action that has the potential to improve conditions for all. The opposition of collective and individual interests is a classic social dilemma (Borch and Willer 2006; Dawes 1980; see Snow and Owens, this volume, for more on collective action).

Legitimacy processes influence the choices that lower ranking and higher ranking people make. Legitimized systems of inequality are more stable than those that lack legitimacy. Lower ranking actors who act independently to improve their situations can strengthen inequality systems and their legitimacy if they compete with their low ranking peers (Walker and Willer 2007). The threat of collective action weakens the status quo's legitimacy and potentially destabilizes systems of inequality. In opposition, high status actors are motivated to take actions that legitimize systems of inequality that lack it and to reinforce the legitimacy of stable systems. The next section includes a discussion of legitimacy processes and introduces theory that explains how social orders are legitimized and how legitimized social systems affect the behavior of groups, individuals, and individuals in groups.

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## Legitimacy Processes and Legitimacy Theory

Legitimacy: The condition of being in accordance with law or principle (The Compact Edition of the Oxford English Dictionary, 1971, Oxford University Press).

Contemporary legitimacy research spans a broad range of topics. At the microsocial level, researchers study the connections between legitimacy processes and the differentiation of task and socioemotional leadership in small groups (Burke 1967), and the stability of hierarchically organized group structures (Ridgeway and Berger 1986; Ridgeway and Walker 1995; Walker and Zelditch 1993). Organizational researchers analyze relationships between legitimacy and the diffusion of organizational forms (Meyer and Rowan 1977), rates of organization foundings (Hannan and Freeman 1989) and the effectiveness of formal authority (Barnard 1938; Dornbusch and Scott 1975; Walker 2004). Macrolevel researchers link variations in legitimacy to the decline of political regimes and societies (Smelser 1963) and to the emergence of social movements that establish new political systems

(McCarthy and Zald 1977). The extensive attention given to legitimacy and legitimacy processes reflects the topic's importance to general understandings of a broad spectrum of social life.<sup>5</sup>

The founders of modern social science established legitimacy as an important component of social life although not all of them used the term. Marx and Engels ([1845] 1939) identified legitimacy as a mechanism that permits the powerful to suppress opposition to their hegemony and to control the less powerful. Durkheim ([1893] 1933) discussed the importance of rules—and of consensus on their meaning—to the creation and maintenance of society as we know and experience it. Weber ([1918] 1968) described three bases of legitimacy and the importance of legitimacy processes to the establishment and stabilization of inequalities of power and domination at the macro-social and organizational levels.

Despite centuries of research and writing on the subject, legitimacy is not always clearly defined. Some contemporary social scientists offer nominal definitions that describe legitimacy as a state of being; Troyer (2011) defines legitimacy as a “state of appropriateness.” Others define legitimacy to mean legal or quasi-legal as in the definition that opens this section (cf. Hechter 2009; Zelditch 2001). Theorists and researchers want precisely defined concepts that can be used for theory building or translated into variables that can be used for hypothesis testing. Many definitions of legitimacy are not useful for those purposes. Some researchers sidestep problems of definition and discuss factors that cause or strengthen legitimacy (Della Fave 1980; Matheson 1987; Younts 2008). Finally, some theorists

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<sup>5</sup> Distinctions drawn between macrosociological, organizational and microsociological conceptions of legitimacy are generally matters of emphasis rather than fundamental substantive differences. As an example, group processes researchers predict high levels of behavioral consistency among members of groups for which a majority acknowledges the legitimacy of rules that apply to their actions. Students of political processes make similar predictions although they may focus on cross-societal comparisons of the relationship between social stability and aggregated (e.g., national) acknowledgment of the legitimacy of constitutional provisions.

describe legitimacy according to its purposes or functions.

Legitimacy can serve *normative*, *evaluative* and *instrumental* functions. Normative theorists (e.g., Horne 2009) characterize rule-governed social forms as legitimate if the rules are lawful in either the formal, legal sense or in the uncodified, normative sense. That is, a social object or process is legitimate if it is governed by rules and the rules are a basis for sanctions (or of social support for sanctions) in the event of deviation.

Jackson (1965) identifies *behavioral* and *evaluative* components of norms. At the behavioral level, norms establish definitions of situations and proscribe or prescribe classes of structures, processes, behaviors and actors that constitute a situation. For example, specific configurations of actors and roles carry the label “kindergarten class.” Rules that describe the relationship between a basis for rewards (e.g., number of hours worked) and expected rewards (expected pay) are “distribution rules” (Cook 1975).

Legitimized rule-governed systems also establish evaluative criteria. They describe socially approved or disapproved elements of social life within an identifiable range or scope.<sup>6</sup> As an example, wage inequality is legitimized (i.e., approved and rewarded) in modern market economies.

Finally, rules serve instrumental functions. Modern industrial societies use the principle of meritocracy to justify substantial income and occupational inequality. The justification is consistent with Davis and Moore’s (1945) theory of stratification which asserts that occupations get different rewards because wage inequality ensures that important positions have an adequate supply of labor. Their theory implies that any society that rewards occupations equally will have

difficulty filling roles that are crucial to the society’s survival.

## Legitimacy: Basic Ideas

Neither the failure of some writers to define legitimacy nor the absence of an unambiguous definition is surprising. Legitimacy has been described as a phenomenon, an epiphenomenon, a process, and as a process *and* an end state that joins subjective perceptions to objective reality. One goal of the discussion that follows is to reduce uncertainty about the meaning of the term.

Weber’s ([1918] 1968, p. 31) conception of legitimacy is arguably the most important and influential. Weber reasoned that rational actors enact behaviors out of self-interest or because they are commonly practiced (i.e., customary). He also observed that some behaviors are enacted because they are prescribed by legitimized rule-governed systems (i.e., “orders”). Weber classified orders as legitimate if they are *valid* (i.e., establish obligations) or if they model *desirable and appropriate* action (i.e., describe exemplary behavior). The twin meanings established an ambiguity that generated two broad streams of legitimacy research.<sup>7</sup>

The first research program centers on valid social relations and the second on beliefs about the desirability or appropriateness of social relationships. Theory and research that focus on valid social arrangements emphasize the emergence and validation (i.e., justification) of rules that govern social forms, and constitute or define meaningful action. In turn, valid orders create a sense of obligation for individuals and groups that are governed by them. Investigators in this branch of legitimacy research are also concerned

<sup>6</sup> Cancian (1975) classifies norms as *ranking norms*, *membership norms* and *reality assumptions* on the basis of their range. Ranking norms are standards used to differentially evaluate actions or individuals. Membership norms are rules that define the desirable attributes and actions of members of rule-governed groups. Reality assumptions are rules or standards that describe desirable characteristics of situations, roles or identities.

<sup>7</sup> The language of Roth and Wittich’s popular translation of Weber ([1918] 1968) illustrates the conflation. “Action, especially social action which involves a social relationship, may be guided by the *belief* [emphasis added] in the existence of a legitimate order. The probability that action will actually be so governed will be called the ‘validity’ (*Geltung*) of the order in question.” ([1918] 1968, p. 31). See also Henderson and Parsons’ earlier but very similar translation (Weber [1918] 1964, p. 126).

with the behavioral consequences of valid standards and with identifying factors that maintain or undermine the validation of rules, social structures and actions. This research is concentrated in the macro-sociological and organizational literatures (Walker 2004) and has been undertaken from functionalist, conflict and instrumentalist theoretical perspectives (Hechter 2009; Zelditch 2001). Lipset's (1959, 1963) description of the processes through which governments can achieve legitimacy is a classic example of research in this branch.

The second stream of theory and research treats legitimacy as an evaluation that individuals make of social forms and actions within them. Research in this branch is concerned with whether individuals recognize (or acknowledge) the validity of social forms that define and govern meaningful action, whether they evaluate such systems as desirable models of social structure and process, and how the acknowledgement of valid systems and evaluations of their desirability affect behavior. Cook's (1975) classic experiment on equity processes is an exemplar of research in this branch. Social theorists argue that the principle of proportionality (Glazer 1975; Homans 1974) is a taken for granted (i.e., valid or legitimate) element of contemporary western societies. Cook argued that individuals acknowledge (validate) and accept (i.e., internalize) distribution rules like the principle of proportionality as standards of fairness. She gave subjects (Ss) in an experiment responsibility for dividing pay between themselves and work team peers. Cook tested hypotheses that are implied by the principle of proportionality, although her article does not describe it. Nor did she describe the principle to her Ss or tell them to use it to allocate earnings. Yet, Ss' allocation of pay was consistent with her hypotheses and implications of the principle of proportionality. Her theory implies that legitimized system-level principles of equality, inequality and equity affect individuals' conceptions of fairness and, subsequently, their behavior.

The research traditions just described emphasize different elements of legitimacy processes and, for a substantial period, developments in the two traditions proceeded independently. Some

writers offered important statements on legitimacy without making reference to Weber, (cf. Kelman 1958; Burke 1967, 1968; Della Fave 1980; but see Della Fave 1986). However, like those who make explicit reference to Weber, their work usually centers on either valid social orders or individual acknowledgment of and assessment of the desirability of valid orders, but not both. Consequently, research left unanswered questions about the connection between Weber's conception of legitimacy as validity and the conception of legitimacy as the belief that rules and the orders to which they apply are models of desirable social structures and actions within them. The problem was resolved by Dornbusch and Scott (1975), who developed a theory of legitimacy that unified the macrosocial and microsocial approaches to the study of legitimacy.

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### The Dornbusch-Scott Theory of Legitimacy<sup>8</sup>

Contemporary legitimacy theory has at least three explanatory foci. It is concerned with (1) how legitimacy is created or established, (2) how legitimacy is reinforced and sustained, and (3) how legitimized orders affect individual and group behavior. The Dornbusch-Scott (1975) theory of legitimacy and Zelditch and Walker's (2003; Walker 2004) extension of it reflect recent developments at the frontiers of legitimacy research. What is known as the multiple-source, multiple-object theory of legitimacy (hereafter Legitimacy Theory or LT) builds on Weber's earlier work and responds to several issues: (1) What is entailed by Weber's concept of "legitimate order?" (2) How are the ideas of legitimacy as validity and legitimacy as evaluations of models of action related? (3) How and under what conditions is legitimacy established? (4) How does legitimacy affect behavior? Dornbusch and Scott resolved questions about the dual meaning of legitimacy and the processes through which legitimacy affects behavior. Zelditch and Walker addressed

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<sup>8</sup> This section draws on arguments introduced by Zelditch and Walker (2003) and Walker (2004, 2005).

the meaning of order and the conditions under which legitimacy is established.

### Legitimacy Theory and its Extension

Weber's definition of legitimate order conflates the ideas of legitimacy as a state of being that evokes a sense of obligation and legitimacy as any individual's evaluation of an order's desirability or suitability as a model of social organization. Dornbusch and Scott separated the concepts and described the mechanisms through which each legitimizes power and affects the stability and effectiveness of organizations. The Dornbusch-Scott theory applies to formal organizations with at least three hierarchical levels of influence and power. They define validity as the condition that exists when norms, values, beliefs and procedures are elements of reality that govern the actions of individuals and subgroups. Validity creates a sense of obligation for group members. Dornbusch and Scott introduced the term *propriety* to describe any individual's acceptance (i.e., positive evaluation) and support of rules, norms, values, beliefs and procedures as desirable models of action—the way things ought to be (Homans 1974).

Validity is a system-level characteristic, an attribute of social structures, roles within structures, and situated action. Claims to validity can be justified on the grounds of tradition, charisma and natural or rational law (Weber [1918] 1968).<sup>9</sup> Valid social forms constitute or define social reality and compliance or consistency with them is obligatory. Group members obey valid rules because they acknowledge that the rules prescribe “the way things are done” rather than for fear of sanctions. The distinction is crucial for determining whether legitimacy or power (i.e., threat of sanctions) motivates action. The demarcation cri-

teria are stated simply but distinguishing the two bases of action empirically is methodologically challenging. The U. S. Constitution is an example of a valid set of rules that describe a governmental system and its operating principles. Similarly, normative and legal definitions of the family establish standards of behavior for family members and individuals, and for groups that interact with families as social units.<sup>10</sup> Deviations from valid standards like the Constitution or the norms governing family life invite negative sanctions.

Propriety is an individual-level orientation to social structures, the rules that govern them, and actions within them. Propriety is an attitude about or evaluation of the desirability of system elements as models of social life. Returning to an earlier example, Barack Obama's statement to Joe the Plumber expressed an attitude about the principle of progressive taxation (i.e., tax rates that vary positively with incomes). The Senator's statement reflected a cognition—or state of mind—that has affective (evaluative) and conative (i.e., a predisposition to act) components. As a guiding principle of federal income tax policy, progressive taxation is also valid (i.e., legal, collectively acknowledged and constitutively legitimate). The validity of tax policy influences individual evaluations of its propriety.

Validity and propriety are primary sources of legitimacy that are reinforced by *authorization* and *endorsement*. Authorized social orders have the positive evaluation and support of high status actors. Support implies approval, backing for the application of sanctions against those who contravene valid standards, and a willingness to provide resources that can be used as sanctions. Social orders are endorsed if they are positively evaluated and supported by the masses, for example, line and staff employees or other *lower participants* in work organizations (Etzioni 1961).

<sup>9</sup> Stryker's (1990, 1994) writings about government agencies and social policy suggest that consideration should be given to science as a fourth basis of legitimation. Alternatively, modern scientific and legal practices are intertwined and legitimation-by-science can be considered a special case of rational-legal justification.

<sup>10</sup> Laws and norms change and transitions from one set of rules to another are often troublesome and fraught with difficulty. As an example, consider changing definitions of the family (e.g., the inclusion of same-sex couples and their children or polygamous relationships) and controversies about their legality and legitimacy.

Validity establishes a social system as an element of objective reality (i.e., the way things are). Propriety, as an evaluation of a system's desirability, reflects an individual's sense of the way things ought to be. An individual's *acknowledgment* of a valid system can influence her evaluation of its propriety but validity and propriety are independent dimensions. An example illustrates their independence.

The USA Patriot Act (2001) is a valid law. Its validity was reinforced initially by authorization (i.e., support of President Bush the younger, Attorney General Ashcroft, Congress which passed the bill and the federal courts). It was also endorsed by a public that expressed support for a wide range of anti-terrorism measures immediately after the attacks of September 11, 2001. However, there was also opposition to the law from its inception. It is unclear how much popular support the law has at this writing but many Americans oppose it. They do not attribute propriety to it.<sup>11</sup> The example also gives an overview of how various elements of the theory (e.g., validity, authorization, endorsement, propriety) work together. What follows is a formal presentation of Legitimacy Theory, as revised by Zelditch and Walker, beginning with its antecedents, the conditions necessary for its application.

## Antecedents of Legitimacy

Legitimacy is an order-creating and order-maintaining phenomenon. Legitimacy is established and maintained by several sources of support including cultural systems, institutions and individuals. Zelditch and Walker's (2003; Walker 2004) revision of the Dornbusch-Scott theory relaxes the theory's scope to include systems with fewer than three levels of hierarchy. The revised theory applies to multiple objects including acts, persons, roles and role relations. Those changes extend the theory's range to politics and political actors and to other social relations like families

and neighborhood bridge clubs. The revised theory also addresses the ambiguity in Weber's use of the term "order" and introduces several new terms.

In English, "order" can mean either a system (as in social order), or a command or directive. Zelditch and Walker (2003) introduced the term *regime* to capture the idea of a social order or system of social relations. They borrow the term from political science and political sociology (see Keohane and Nye 1977) but invest it with a different meaning. They use the common terms "action" or "behavior" to convey the idea of an order as a command or directive in the definitions and theoretical assumptions below.

**Definition 1:** (*Regime*). A regime, R, is a rule-governed system of positions, relations between positions and position-specific acts.

A fully-specified regime includes rules that describe criteria for role occupancy, acceptable role enactment, interaction among roles and so on. A regime is a blueprint that becomes a functioning social system when individuals or groups are added. Regimes exist at the macro (e.g., the North Atlantic Treaty Organization) and micro levels (e.g., nuclear families or local chapters of sororities).

Regimes are rule-defined but legitimacy is not inherent to them. Many rule-governed systems are neither acknowledged nor accepted as legitimate and do not possess normative force. As an example, ideologies are ideational systems and some of them describe ideal-typical regimes, like the dictatorship of the proletariat (Marx [1875] 2001, p. 4). Ideal-typical systems may not exist and those that are established may never be validated. As non-valid systems, they lack the motive force of validated regimes.<sup>12</sup> (See Hunt in this volume for a discussion of ideologies and inequality.)

<sup>11</sup> Measuring support for the law is difficult because expressions of support vary substantially with the wording of survey questions (Best and McDermott 2007).

<sup>12</sup> Ideologies certainly have motive force at the individual level because they can gain propriety. Groups of individuals who attribute propriety to ideologies can form movements, one goal of which may be to establish elements of those ideologies as valid regimes (e.g., a dictatorship of the proletariat).



Legitimized regimes establish standards, violations of which can be sanctioned. Weber ([1918] 1968) argued that every regime wants to establish its legitimacy and that is as true of families as it is of newly formed organizations (Hannan and Freeman 1989; Meyer and Rowan 1977). Regimes can achieve objective and subjective legitimacy (i.e., validity and propriety respectively). Formally,

**Definition 2:** (*Valid Regime*). A regime,  $R$ , is valid if its constitutive values, beliefs and rules are collectively acknowledged to apply to and to create binding obligations for elements and units of  $R$ .

**Definition 3:** (*Valid Element*). An element,  $e$ , in  $R$  is valid if members of a collectivity acknowledge that  $e$  is consistent with rules that define or govern  $R$  and constitutive elements of  $R$ .

**Definition 4:** (*Regime Propriety*). A regime,  $R$ , possesses propriety for any individual,  $i$ , if  $i$  positively evaluates its constitutive values, beliefs and rules.

**Definition 5:** (*Element Propriety*). An element,  $e$ , in  $R$  possesses propriety for any individual,  $i$ , if  $i$  positively evaluates  $e$ .

**Definition 6:** (*Authorized Regime*). A regime,  $R$ , its elements and the rules that govern it are authorized if high-status actors positively evaluate and support it.

**Definition 7:** (*Endorsed Regime*). A regime,  $R$ , its elements and the rules that govern it are endorsed if lower-status actors positively evaluate and support it.

Authorization and endorsement imply active support (e.g., expressions of willingness to provide or actually providing resources that are used as sanctions). However, both phenomena are examples of an old aphorism: “If you are not part of the solution you are part of the problem.” Quiescence, or the *absence* of active opposition, implies authorization or endorsement. The failure of leaders to take action that combats race discrimination fosters the perception that they support the practice. Similarly, the absence of mass opposition to differences in U. S. government treatment of illegal aliens from Cuba and those from Haiti or Mexico, sustains the perception that the masses endorse unequal standards of treatment.

## The Multiple-Objects, Multiple-Sources Theory

The Zelditch-Walker revision of the theory includes two additional ideas, *acknowledged legitimizing element* (ALE) and *regime legitimizing formula* (RLF).<sup>13</sup>

**Definition 8:** (*Acknowledged Legitimizing Element*). An element,  $e$ , (e.g., a norm, value, belief, practice or procedure), in a regime,  $R$ , is an acknowledged legitimizing element (ALE), if collectivity members acknowledge  $e$  as valid and applicable to elements of  $R$ .

**Definition 9:** (*Regime-Legitimizing Formula*). A formula is a regime-legitimizing formula (RLF) for a regime,  $R$ , or for some element of  $R$ , if ALEs imply it either logically or empirically and, in turn, the formula logically or empirically implies  $R$ 's legitimacy.

Zelditch and Walker (2003) begin their revision of the Dornbusch-Scott theory by specifying four conditions under which regime legitimizing formulas link acknowledged legitimizing elements to regimes that lack legitimacy or whose legitimacy is contested. The four conditions are stated formally in the first argument of Legitimacy Theory, the *Basic Legitimation Assumption*:

**Assumption 1:** (*Basic Legitimation Assumption*). For any regime,  $R$ , whose legitimacy is undefined or contested, the undefined or contested elements of  $R$  ( $e_R$ ) acquire validity if and only if:

**Condition 1:** (*Consonance*). The nature, conditions and consequences of  $R$  and its elements are consonant with any acknowledged legitimizing element to which a regime legitimizing formula appeals.

**Condition 2:** (*Objectification*). Any acknowledged legitimizing element to which a regime legitimizing formula appeals is treated as a matter of objective fact.

<sup>13</sup> Zelditch and Walker (2003; Walker 2004, 2005) use the term “accepted legitimizing element” in earlier writings. The meaning of “accepted” is ambiguous; acceptance can imply that group members positively evaluate an element. However, if the idea refers to validity, “acknowledge” is a more reasonable term. Actors can acknowledge that an element or regime exists and that it governs their actions without positively evaluating it.

**Condition 3: (*Impartiality*).** Any benefit of R to which a regime legitimizing formula appeals is either in the group's interest or, if the appeal is to self-interest, it can be made universal.<sup>14</sup>

**Condition 4: (*Consensus*).** Group consensus acknowledges that elements to which a regime legitimizing formula appeals to legitimize R are valid (i.e., they are ALEs).

## Consonance

The Basic Legitimation Assumption asserts that validity cannot be achieved unless a regime legitimizing formula (RLF) links a non-legitimate regime to consonant elements of acknowledged legitimizing elements (ALES). Lipset (1959, 1963) argued that new political regimes can acquire legitimacy if they are consonant with legitimized regimes. However, a particular social form may be consonant with non-legitimate regimes in one situation and discordant in others. As an example, Rothstein (2009) argues that holding democratic elections is not sufficient to establish the legitimacy of new political regimes. Electoral democracies have proved successful and are taken for granted in the West. However, Western-style elections and the ideology that underlies them are not consonant with extant or traditional political systems in many corners of the globe. The initial experiences of Western interests that installed electoral democracies in early twenty-first century Iraq, Afghanistan and other Middle Eastern countries support the claim. In the main, those governments have not achieved legitimacy.

## Objectification

Objectification is a second condition necessary to establish legitimacy. Every individual becomes conscious of her surroundings which are, to begin, nothing more or less than data for

the five senses. Actors may assign meanings to their perceptions but those meanings are purely subjective and can serve no social purpose until they are transformed into something real. Signs or symbols assist in making the subjective real (i.e., objectifying the subjective) and in making it available to others. Berger and Luckmann (1966, p. 92 ff.) define legitimation as the process through which objectification of the subjective is justified.

President Obama's statement to Joe the Plumber is a subjective assessment of a policy, but the policy of progressive taxation is legitimate (i.e., valid). It has been legitimized by, among other claims, invoking Jesus's principle that "from those to whom much is given much is required." The teachings of Jesus, a charismatic figure, are acknowledged legitimizing elements that can be connected to consonant opinions by regime legitimizing formulas. As a result, what began as opinion becomes a legitimized matter of fact.

## Impartiality

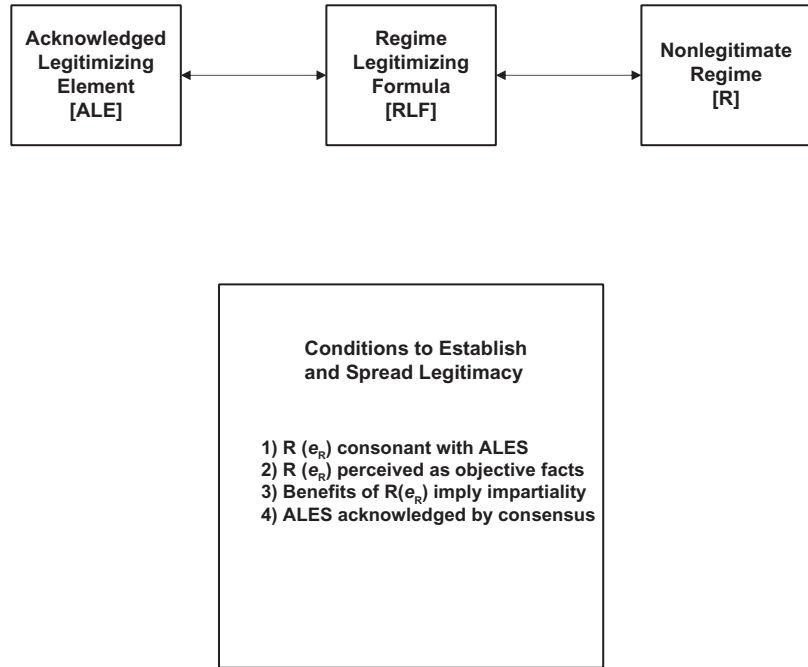
Impartiality is a third condition for Assumption 1. Acknowledged legitimizing elements and the regimes to which they are applied must appeal to general rather than specific interests (i.e., they must be unbiased). Elements that appeal to specific interests must be shown to be universally beneficial if they are to achieve legitimacy.

## Consensus

Ancient philosophers described the importance of consensus as early as the fourth century BC (Aristotle [353 BC] 1943). Its role is most central in consensus theories of legitimacy (Lipset 1959; Parsons 1958; Rousseau [1762] 1964) but consensus is an important component of all legitimacy theories. Conflict theorists (Engels [1884] 2001; Marx and Engels [1845] 1939) identify the role that consensus takes in the resolution of conflict and the emergence of stability. Weber ([1918] 1968) integrated consensus and conflict

<sup>14</sup> The legitimation assumption surveys the world from the point of view of members of a focal system. Any interests to which it refers are perceived rather than "real" interests.

**Fig. 15.1** Graphic representation of the basic legitimization assumption



arguments but consensus remains an important consideration in his theory.

Condition 4 asserts that the elements on which a contested regime stakes its claims to legitimacy must be collectively acknowledged as valid. Proponents of the USA Patriot Act (2001) claimed that the Act was legitimate under provisions of the U. S. Constitution (an ALE). A majority of U. S. citizens acknowledge the validity of rational legal authority. A shaman who claimed legitimacy for the Patriot Act because a groundhog saw its shadow on the day the bill was introduced would be treated with skepticism.<sup>15</sup> Consensus is necessary to establish legitimacy but consensual validation is also necessary to sustain it. Legitimized regimes cannot maintain stability or motive force if the collectivity questions or rejects the bases of their claims to legitimacy.<sup>16</sup>

Figure 15.1 describes the process through which a non-legitimate regime acquires legitimacy. Let  $R$  be the first version of a progressive federal income tax. The U. S. Constitution expressly forbade imposition of direct federal taxes and in the early 1890s there was substantial opposition to creating an income tax. Nevertheless, Congress proposed and passed the 16th Amendment. A key question for the new regime was: “Will the new regime achieve legitimacy?”  $R$ ’s initial claim to legitimacy was anchored in its consonance with the legislative branch’s authority to amend the Constitution (i.e., an ALE). However, the Basic Legitimation Assumption claims that the new regime could not achieve legitimacy unless, and until, it satisfied the four conditions described above. The inherent bias of its progressive character (i.e., unequal tax rates) was justified by appealing to the benefits an income tax would provide for the country (i.e., unequal treatment of individual incomes was trumped by an appeal to universal or common interests). The amendment gained consensus—three quarters of the states acknowledged its validity by ratifying it. Finally, the justification was objectified and upheld by subsequent court decisions.

<sup>15</sup> Signs and conjurer’s visions *are* valid knowledge in some societies and, as such, are perfectly acceptable bases of legitimacy.

<sup>16</sup> See Zelditch and Walker 2003 and Walker 2004 for evidence of the importance of consensus, impartiality, objectification, and consonance to the establishment and maintenance of legitimacy.

Figure 15.1 illustrates the process through which regimes are legitimized. Acknowledged legitimizing elements are valid by definition. However, a sizable proportion of group members must attribute propriety to the logic or arguments of a regime legitimizing formula in order for the legitimacy of ALEs to spread to regimes that lack legitimacy. Individuals and groups that create regimes *de novo* often invent logics that justify their legitimacy. As an example, black Africans and English subjects arrived in the English North American colonies simultaneously.

A burgeoning agrarian capitalist economy was supported initially by European and African indentured servants. The conversion of black labor to slave labor and “the turning of Africa into a warren for the commercial hunting of black skins” (Marx [1867] 1967, Vol. 1, p. 715) came later. The transformation was completed in the last half of the seventeenth century when legitimizing ideologies (e.g., that black Africans were sub-humans) were accepted as justification for the enslavement of blacks (Fields 1990). The legitimizing ideologies were also used to justify other practices that differentiated slaves from free persons.

Acknowledged legitimizing elements are often drawn from outside a given system’s boundaries. For example, state and federal laws establish requirements that every putative corporation must meet before it can be given the legal designation “corporation.” The requirements are ALEs and company officers can point to them as evidence of their company’s status as a legitimate business. Of course, some companies create many of the formal trappings of legitimate corporations without establishing every feature necessary to attain full and complete legitimacy. After they are identified as, for example, “dummy corporations,” their ill-gotten legitimacy quickly dissipates.

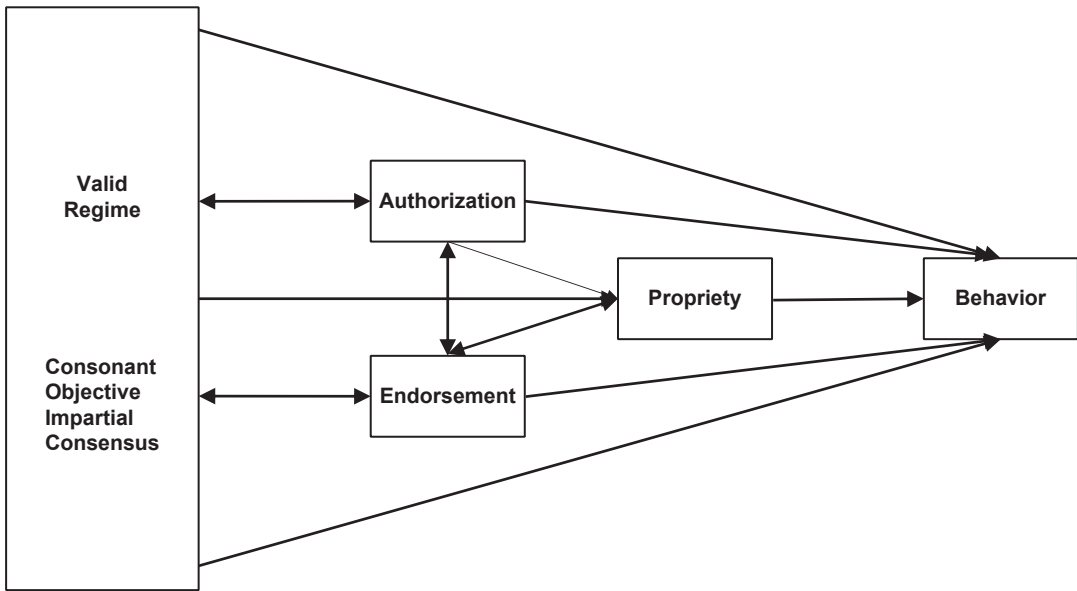
Regime-legitimizing formulas are translation devices. They include statements that spell out the logic of a regime’s claims to legitimacy. A regime-legitimizing formula generates statements like the following: If  $e$  (e.g., an amendment to the Constitution) is an instance of an acknowledged legitimizing element,  $e$  is legitimate. Regime le-

gitimizing formulas connect ALEs to elements of regimes that lack legitimacy (e.g., a system of chattel slavery) thereby making it increasingly likely that the regimes will achieve legitimacy. The *spread of legitimacy* can also strengthen the legitimacy of regimes whose legitimacy is questioned. Just as important, legitimacy can spread among elements within regimes. It can be transferred from role occupants to social roles. Weber ([1918] 1968) describes the transfer of charisma from charismatic individuals to the offices they hold (office charisma) and, subsequently, to their successors.

Legitimacy as validity is not an all or nothing phenomenon (Walker et al. 2002). A regime or any of its elements can achieve gradations of legitimacy. A regime’s legitimacy is weakened if any of the four conditions is satisfied only minimally or reversed. A judge who issues biased rulings will lose legitimacy by violating the principle of impartiality. She may also lose the support of other players in the judicial system which further undermines her legitimacy.

The Basic Legitimation Assumption describes the legitimization of regimes or the reinforcement of regimes for which legitimacy is contested. Zelditch and Walker integrate the Basic Legitimation Assumption with Dornbusch and Scott’s theory to complete the revised Legitimacy Theory. The revised and extended theory applies to large and small systems and describes the processes through which authorization and endorsement reinforce validity, and how validity shapes and constrains the behavior of individuals and groups. Figure 15.2 is a graphic representation of the theory.

Consider a rule-defined regime,  $R$ , a hierarchical system of unequal wages like that in the contemporary United States. Assume that  $R$  satisfies the principles of Assumption 1 (i.e.,  $R$  is valid). Legitimacy Theory claims that for any behavior governed by a legitimized regime, the likelihood that it will be enacted varies positively with its consistency with  $R$ .  $R$ ’s validity affects behavior through a complex process that begins with its positive effects on authorization and endorsement. In turn, authorization and endorsement also reinforce  $R$ ’s validity as the double-headed



**Fig. 15.2** Valid regimes, propriety and behavioral effects of legitimacy

arrows on Fig. 15.2 imply. Authorization and endorsement imply that high status actors and the masses will support the use of sanctions against those who fail to comply with R (e.g., those who propose or enact policies that allocate wages on the basis of need rather than performance). LT also implies that authorization and endorsement are positively associated. Formally,

**Assumption 2.1:** (*Authorization of Regimes*): Authorization of R or elements of R is a positive function of R's validity.

**Assumption 2.2:** Authorization of R or elements of R is a positive function of the endorsement of R.

**Assumption 3.1:** (*Endorsement of Regimes*): Endorsement of R or elements of R is a positive function of R's validity.

**Assumption 3.2:** Endorsement of R or elements of R is a positive function of the authorization of R.

Assumptions 1 through 3.2 describe legitimacy processes at the group level. The remaining assumptions describe individual level processes. R's validity and its authorization and endorsement are presumed to affect individuals' behavior directly and indirectly through their effects on individuals' attributions of propriety to the wage

structure as Fig. 15.2 shows. Individuals who attribute propriety to R will enact behaviors that support income inequality and resist policies and procedures designed to flatten the income distribution.

**Assumption 4:** For any actor,  $i$ ,  $i$ 's attribution of propriety to R or elements of R is a positive function of R's validity.

**Assumption 5:** For any actor,  $i$ ,  $i$ 's attribution of propriety to R or elements of R is a positive function of the authorization of R.

**Assumption 6:** For any actor,  $i$ ,  $i$ 's attribution of propriety to R or elements of R is a positive function of the endorsement of R.

**Assumption 7:** For any behavior,  $b$ , that is an element of R, the likelihood that an actor,  $i$ , enacts  $b$  is a positive function of  $b$ 's propriety.

Assumptions 4–7 complete Legitimacy Theory. Dornbusch and Scott (1975) describe studies that support the original formulation and Walker and Zelditch (1993; Zelditch and Walker 1998, 2003) describe experimental findings that support the revised theory including the Basic Legitimation Assumption (Zelditch and Walker 2003). Legitimacy Theory is applied to the issue of affirmative action in the next section. The application shows how specific affirmative action

procedures have been legitimized. Additionally, looking at affirmative action policies through the lens of Legitimacy Theory sheds light on disputes between proponents and opponents of particular affirmative action policies—disputes that have raged for the better part of a half century.

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## Affirmative Action: Applying Legitimacy Theory

Theories are nets cast to catch what we call ‘the world:’ to rationalize, to explain and to master it. We endeavour to make the mesh ever finer and finer. (Popper, *The Logic of Scientific Discovery* [1934] 1959, p. 59)

Many consider Weber the father of modern legitimacy studies. Elaborations and extensions of his ideas center on processes that legitimize power and domination and the effects of that legitimization. Dornbusch and Scott (1975) and Zelditch and Walker (2003; Walker 2004) extend the theory’s scope and draw on the full complexity of Weber’s approach. However, complexity often masks subtleties of process. The discussion that follows applies Legitimacy Theory to a specific issue in the social psychology of inequality—affirmative action procedures as they are implemented in the contemporary United States. The application demonstrates the full range and power of Legitimacy Theory.

## Affirmative Action

Affirmative action is an important issue in the political and social lives of many of the world’s people (Sowell 2004). Various policies and procedures have been implemented under that rubric as partial remedies for race, ethnic and gender inequality. Affirmative action policies have sparked heated debates in the United States and abroad. Legitimacy Theory is applied to affirmative action policies to show how regimes are legitimized (or not). The application demonstrates that legitimacy is important for creating and maintaining orderly societies, that regimes can

compete for legitimacy, and that regime competition can generate rancorous conflict.

The earliest affirmative action programs implemented in the United States centered on, but were not exclusive to, black-white race inequality. A majority of American blacks were held as chattel from the middle to late seventeenth century through the end of the American Civil War (1861–1865). A century later, black Americans were still on the bottom rungs of almost every ladder of social and economic well-being. The disparate positions of black and white Americans set the stage for the modern period of affirmative action.

Proponents and critics of contemporary affirmative action often trace its history to President L. B. Johnson’s Executive Order 11246 (September 24, 1965). However, it was President Kennedy’s Executive Order 10925 (March 6, 1961) that introduced the term into the modern lexicon. Post-Civil War institutions like the Freedmen’s Bureau and Reconstruction were precursors of modern race-based affirmative action (Franklin 1994). President F. D. Roosevelt’s Executive Order 8802 (June 25, 1941) issued during World War II was an important milestone that presaged the orders issued by Presidents Kennedy and Johnson. President Roosevelt’s order read, in part, “...there shall be no discrimination in the employment of workers in defense industries [or government] because of race, creed, color, or national origin...”<sup>17</sup>

President Roosevelt’s directive expanded the list of protected classes to creed, color and national origin in addition to race. Current law includes the categories of religion and sex. Recent controversies, including pending legal challenges, center on the transformation of affirmative action policies designed to combat inequality into policies that sustain or establish inequality. The ensuing debate offers insight into the complexity of legitimacy processes.

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<sup>17</sup> The bracketed phrase was penciled in on the original typescript.

## Affirmative Action: Creating and Legitimizing Equal Opportunity

The country Lyndon B. Johnson inherited after the assassination of President Kennedy was marked by stark race inequalities. To be sure, black Americans had made substantial progress following their general emancipation at the conclusion of the American Civil War. However, race prejudice and discrimination were widely practiced in the mid-1960s, and, in some corners of the country, they were the law of the land. Against that backdrop, and following President Kennedy's lead, President Johnson issued Executive Order 11246.<sup>18</sup> The order established equal opportunity and non-discrimination as official government policy. The policy shift was driven by the idea that equality of opportunity was the key to achieving social and economic parity for Americans who had been targets of discriminatory treatment. Johnson's order stated:

It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national origin, and to promote the full realization of equal employment opportunity....

President Johnson's order described a new civil rights regime. Call it the Equal Opportunity Regime. The order stated clearly that any policies created or implied by the Equal Opportunity Regime could be enforced by the coercive power of the federal system (e.g., by fining or incarcerating violators). But coercion requires increased government funding for monitoring and for punishing those who are found to have

violated the regime's stipulations. Legitimate regimes experience lower costs on both dimensions. A legitimized Equal Opportunity Regime is optimal for the government and for individuals the regime was designed to benefit. Did the Equal Opportunity Regime achieve legitimacy? The simple answer is "yes."

President Johnson's order authorized equal opportunity *and* delegitimized federal employment discrimination on any of the four dimensions the order enumerated. In layman's terms, the order made discrimination in federal hiring illegal. The President's authority to issue and enforce the order was legitimized by Article II of the United States Constitution which enumerates executive branch powers. That is, the order's validity was established by a regime legitimizing formula that connected the Constitution (an ALE) to the extension of executive authority to establish new federal policy. The newly legitimized regime was translated quickly into concrete behavior as government agencies and subcontractors created mechanisms to ensure equality of opportunity.

The Civil Rights Act of 1964 affirmed and reinforced President Johnson's directive to create equal opportunity. The Civil Rights Law also extended the federal government's reach well beyond employment issues. The law's language, when coupled with the many contracts between the federal system and state and local agencies, ensured that equal opportunity mandates and policies were adopted quickly by state and local governments. President Johnson's order, the Civil Rights Law, and a plethora of state and local equal opportunity statutes are all forms of authorization that were important for establishing the regime's validity.

Congressional action is also an expression of consensual validation and endorsement (i.e., the will of the people) in a republican form of government. Additionally, the regime is impartial (i.e., it applies universally), it is a matter of objective fact, and it is consonant with founding documents (e.g., the Declaration of Independence and the Constitution).<sup>19</sup> But, authorization (by members

<sup>18</sup> Kennedy and Johnson's orders are considered major milestones in U. S. civil rights law because they extended anti-discrimination law to the general population. However, focusing on their actions should not be interpreted as neglect of the contributions of Presidents Truman and Eisenhower who served between Roosevelt and Kennedy. Both made important contributions to an emerging anti-discrimination regime. President Truman issued an executive order that required integration of the U. S. armed forces and Eisenhower used an executive order to ensure implementation of the policy Truman authorized.

<sup>19</sup> The old regime defined a system of race *inequality* that permitted and, in some cases required, race discrimi-

of Congress) and endorsement were not unanimous. The Civil Rights Act of 1964 was opposed by 30% of both House and Senate members. A sizable minority of people polled during that period, 30–40%, opposed various proposals to create race equality. In the language of LT, 30–40% of the population generally failed to attribute propriety to a policy of strict nondiscrimination. Yet, the Equal Opportunity Regime satisfied the four conditions that the basic legitimization assumption requires to establish legitimacy as validity.

Legitimacy Theory implies that validity affects authorization, endorsement and propriety positively. As such, propriety and endorsement (aggregated propriety) should increase with time. The empirical record is consistent with the implications of LT. The American National Election Study (ANES 2010) has regularly asked Americans to give their opinion of the following statement:

Our society should do whatever is necessary to make sure that everyone has an equal opportunity to succeed.

Almost 9 of 10 respondents (88.3%) to 10 surveys conducted between 1984 and 2008 expressed agreement or strong agreement with the statement. Blacks are more likely than whites to attribute propriety to equal opportunity (93.9% v. 86.8% respectively) but the differences are not large. Indeed, a review of public opinion polling on this question might lead an uninformed but objective observer to question the veracity of any informant who claims that affirmative action is a controversial issue in twenty-first century America. A Legitimacy Theory analysis suggests why modern affirmative action has been a volatile issue for 5 decades.

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nation. It was also considered consonant with the same documents. The beliefs and writings of numerous segregationists as well as landmark decisions of the U. S. Supreme Court (e.g., *Dred Scott v. Sandford* (1857) and *Plessy v. Ferguson* (1896)) “established” and legitimized the secondary status of blacks and other classes of U. S. residents. However, after *Brown v. (Topeka) Board of Education*, race discrimination was rendered inconsistent with the founding documents and the old regime’s legitimacy was increasingly contested.

## Affirmative Action: Recreating and Legitimizing Inequality

The Equal Opportunity Regime generated policies and procedures (i.e., concrete behavior) that were designed to create equal opportunity. However, those policies were slowly replaced with policies designed to produce equal results. Policies intended to produce equality of results can be considered products of a second regime. Label it the Equal Results Regime. The shift from an emphasis on equal opportunity to an emphasis on equal results began during the final years of the Johnson administration. The pace of change accelerated during the Nixon administration and the transition was essentially complete by the time President Nixon resigned the presidency in 1974.<sup>20</sup>

The shift to an equal results regime brought with it a change in focus from individuals to groups. The change brought terms like “statistical discrimination” and “disparate impact” to public discussions of affirmative action and to *tests of fairness* (Skrentny 1996; Sowell 1995). Injustice under the Equal Opportunity Regime required a determination that individuals did not have equal opportunities.<sup>21</sup> Injustice under the Equal Results Regime required only evidence of statistical discrimination or disparate impact. Under such standards, an employer whose labor force is 30% female or an educational institution whose student body is 5% black are under suspicion of discrimination if women and blacks comprise 50+% and 20% respectively of the surrounding community. Sowell (1995), Skrentny (1996) and numerous other writers have addressed the logic of such policies.

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<sup>20</sup> See Glazer (1975) for a thorough discussion of this issue.

<sup>21</sup> President Kennedy created the Committee on Equal Employment Opportunity the forerunner of the Equal Employment Opportunity Commission (EEOC). On a personal note, in early 1962, a local branch of the state employment service asked me to apply for a job that blacks had previously been denied the opportunity to fill. The opportunity to apply for and eventually to fill the position, were a direct result of the intervention of local civil rights organizations and local application of President Kennedy’s order.



Policies that are designed to create equality of result without taking inputs (e.g., motivation or skill) into account often use preferential treatment to make progress toward that goal. One consequence of implementing policies consistent with the Equal Results Regime has been a long and acrimonious competition with the Equal Opportunity Regime. Each regime tries to achieve or to maintain legitimacy. The two regimes share some acknowledged legitimizing elements but differ on others. Each justifies its claim to legitimacy in the morality of western philosophical tradition (e.g., Locke [1690] 1982; Rousseau [1755] 1964, [1762] 1964), the U. S. Constitution, presidential authority, state and federal courts, and the will of the people (i.e., endorsement) as it is expressed through members of Congress and state and local legislative bodies.

Unlike the Equal Opportunity Regime, the Equal Results Regime fails to satisfy the four conditions necessary to establish its validity. The regime lacks consensus, is biased, and it is inconsistent with U. S. law and the founding documents that underlie that law. Consider its standing on the consensus criterion. Proponents of equal results policies are far outnumbered by their opponents who acknowledge their existence but fail to endorse them. The General Social Survey (Smith et al., 2012; hereafter GSS) is a nationally representative survey that has been conducted since 1972. Survey researchers asked the following question nineteen times between 1975 and 2010:

Some people think that (blacks/negroes [sic]/African-Americans) have been discriminated against for so long that the government has a special obligation to help improve their living standards; they are at point 1. Others believe that the government should not be giving special treatment to (blacks/negroes/African-Americans); they are at point 5. Where would you place yourself on this scale, or haven't you made up your mind on this?

Respondents to the GSS reject the Equal Results Regime overwhelmingly. On average, 18.6% of respondents to 19 surveys support the government's use of special treatment to improve the economic situation of black Americans. Approximately thirty percent (29.7%) expressed

uncertainty having some agreement with both positions but almost half (48.7%) oppose such action. The lack of support is shown in stark relief after equivocal responses are eliminated and analysis is restricted to black and white respondents. Only 25.9% support preferential treatment whereas 69.8% of respondents are opposed.

Responses are divided sharply by race on this critical issue. Overall, 13.4% of whites and 51.6% of black respondents support this form of affirmative action. Among white respondents who gave unequivocal answers, 18.3% support giving black Americans special help to improve their economic condition. Conversely, nearly three quarters of black respondents (74.2%) who gave unequivocal responses support government economic assistance to blacks. Policies that overwhelmingly lack consensus signal a *legitimation crisis* (Habermas 1975, p. 46).<sup>22</sup>

Attempts to legitimize preferential treatment face additional obstacles. Preferential policies like those required by the Equal Results Regime violate the impartiality criterion; they are biased by definition. Consider the case of *Grutter v. Bollinger* decided by the U. S. Supreme Court in 2003. Barbara Grutter filed suit against the University of Michigan Law School after she was denied admission. Grutter alleged that her 14th Amendment right to equal protection under the law was violated by a policy that gave preference to blacks and members of some other ethnic groups. The Court, with Justice O'Connor writing for the majority, upheld the law school's policy but acknowledged the policy's race bias.

O'Connor agreed that the Fourteenth Amendment was a bulwark *against* discrimination. Nev-

<sup>22</sup> These data illustrate the often confusing relationship between consensus and endorsement. The data reflect a failure of endorsement rather than a lack of consensual acknowledgement of the regime. Respondents acknowledge (i.e., take notice of) policies that reflect the Equal Results Regime and orient their actions to it. In that sense, the policies are *institutionalized* consistent with Parsons' (1964) use of the term or Mauss' (1975) description of the institutionalization phase of social movements. Uncovering motives for compliance is the only true test of the regime's validity. Compliance out of a sense of obligation follows from legitimacy (validity) whereas compliance to gain rewards or avoid sanctions does not.

ertheless, she concluded that discrimination was permitted in the interest of promoting diversity (*Grutter v. Bollinger* 2003). Put simply, the Court ruled that race discrimination (i.e., procedural bias) is permissible if it provides benefits to the university (i.e., greater “diversity”). The Court’s majority claimed that, in some instances, policies that serve the interests of special groups (or individuals) actually have universal benefits. The claim is built on the idea that groups or institutions that are characterized by greater heterogeneity (diversity) are “better off” than those with less heterogeneity.<sup>23</sup>

Justice O’Connor’s justification of race discrimination was intended to remedy violations of the impartiality and consonance criteria. It does so by trying to make discrimination consonant—not with the law and founding documents—but with the goal of achieving diversity and putative benefits of heterogeneity. Evidence suggests that the tactic has not achieved its goal. As described above, the Equal Results Regime lacks consensus. Its legitimation crisis persists.

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## A Summary and Some Concluding Remarks

Inequality is found at all levels of social organization from dyads to the community of nations. Inequalities invite social comparison and status generalization processes (Ridgeway and Nakagawa, this volume). Some inequalities, like power inequalities that lead high power actors to exploit low power actors, can trigger conflicts that disrupt social order (Plato [390 BC] 1941). Power

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<sup>23</sup> The claim that heterogeneity is beneficial is more general than it appears on its face. The University of Michigan and its law school are not the only “beneficiaries” of invidious discrimination under the logic of the Grutter decision. So too are its majority and minority students whose learning is enhanced by greater “diversity.” President Obama’s claim that progressive taxation benefits all expresses a similar view. Elsewhere, I (Walker 1999) have described how theory—including Legitimacy Theory—implies that such policies have long-term disadvantages for members of minority groups and for race relations more generally. Occasionally, the popular press takes a similar position (cf. Henninger 2012).

exercise ensures that individuals who have less ability, lower status and less power get fewer rewards and pay relatively greater costs than those of higher rank. Perceptible inequality can activate a multi-stage process that requires those on the lower and upper rungs of ladders of inequality to decide several questions as follows:<sup>24</sup>

1. Is systematic inequality a problem? If not the process ends. If yes,
2. Are there alternatives to systematic inequality? The process ends if there are no alternatives to consider. If there are viable alternatives, objectives and policies, then
3. Should a method or strategy for achieving alternatives be pursued? A “no” response terminates the process. A positive decision triggers,
4. Action designed to achieve alternatives formulated or chosen at stages 2 and 3.

Low status actors must decide if systematic inequality is a problem. For example, the average black worker earns less than her white counterpart. There are several alternatives available if she considers the black-white difference a problem. She can (1) do nothing, (2) take action to get her pay raised, or (3) lobby for an equal opportunity or equal results regime. After identifying these possible courses of action, she, or a group of blacks and their supporters, can identify or devise tactics or methods for achieving various alternatives. However, identifying strategies will be of little use if either individuals or groups decide not to act. Legitimacy processes shape the decision frame at every stage of the decision making process.

The legitimacy of inequality, not the fact of objective inequality, influences conceptions of what is fair, unjust and actionable (see Hegtvold and Isom, this volume). Legitimacy processes also influence perceptions of available alternatives, perceptions of the viability of alternatives and of the likelihood that a given alternative will produce a desired outcome. Imagine a world in which race prejudice and discrimination have been abolished. Race differences in the distribu-

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<sup>24</sup> The process described here is a slight revision of the policy process described by Zelditch et al. (1983). See their Fig. 1 for a graphic representation.

tion of individuals to occupations, wages, and promotions are possible if whites have fewer job skills, lower levels of education, and weaker occupational motives than blacks. Under these conditions, black workers, as a group, have substantial occupational advantages. However, black and white *individuals* with similar skills, education and motives ought to experience equal outcomes. The ensuing inequality of groups would be of no consequence to white workers in a world governed by a legitimized Equal Opportunity Regime. It would be a matter of grave concern if they inhabit an alternate world governed by a legitimized Equal Results Regime.

High power actors are faced with similar decisions although it is possible that their decisions may be reactive more often than proactive. That is, the behavior or anticipated behavior of low power actors rather than systematic inequality may trigger decision processes for high power actors. The history of recent American race relations offers examples. Systematic black-white inequality as a result of race prejudice and discrimination was the status quo during the 1950s and early 1960s. Conditions were changing rapidly but race inequality had been a fact of American life for three centuries. Undoubtedly, those conditions troubled some whites just as some of their predecessors had opposed the enslavement of blacks in colonial America. Many joined blacks and others to abolish black-white inequality and it cost some of them their lives. However, many whites who opposed black-white equality did nothing to preserve the status quo until action was taken to dismantle it. White Citizens' Councils and the Ku Klux Klan were very active across the South during the late 1950s and 1960s. The first Citizens' Council was organized *after*, and as a reaction to, the *Brown v. (Topeka) Board of Education* (1954) decision (Klarman 2005). Similarly, the Klan was organized after the Civil War had ended, slaves had been freed, and Reconstruction had begun.

Legitimacy processes operate simultaneously at the collective and individual levels. Legitimacy as validity is constitutive of regimes and establishes obligations for group members to conform to the rules, beliefs and standards of conduct that

define and govern regimes. Legitimacy as propriety is evaluative. Individuals either approve or disapprove regimes; those who approve conform to valid standards and those who disapprove either deviate or require monitoring to assure that they do not disrupt social order.

The multiple-source, multiple-object Legitimacy Theory (Dornbusch and Scott 1975; Walker 2004; Zelditch and Walker 2003) extends legitimacy theories beyond their initial focus on relations of dominance, power and authority. LT is a comprehensive theory that explains how regimes are legitimized, how legitimacy processes establish and maintain the stability of regimes, and how legitimacy processes motivate regime change. There is extensive empirical support for LT but there is more to be done.

Legitimacy is, in one sense, an epiphenomenon. It is found only in the company of other phenomena. Legitimacy is not a cause of the phenomena or systems that achieve it. However, legitimacy processes have profound effects on social structures and processes associated with phenomena that achieve legitimacy. To claim that a phenomenon or regime, like race inequality, is legitimized is to claim that it is a matter of objective fact that has achieved, at least, minimal consensual acknowledgement and is consonant with acknowledged legitimizing elements and other legitimized elements of a given situation.

The much simplified application of Legitimacy Theory to affirmative action policies and procedures shows that legitimacy processes have important and powerful effects on very complex matters. Side-by-side comparison of the Equal Opportunity and Equal Results regimes shows how powerful figures can put regimes in place without securing their legitimacy. The Equal Results Regime is an example. The regime violates the consensus, impartiality, and consonance criteria of the basic legitimation assumption. Despite more than 5 decades of implementation, a number of judicial rulings that support it, and litigious, vocal proponents, the Equal Results Regime has made only partial gains in its bid for legitimacy. Events following the *Grutter* decision are illustrative.

The Supreme Court ruled for lead plaintiff, Jennifer Gratz, and against the University of Michigan in a separate challenge to its undergraduate admissions affirmative action policy (*Gratz v. Bollinger* 2003). The Court published the *Gratz* and *Grutter* decisions simultaneously. In that sense, *Grutter* was only a partial victory. Despite the Court's positive ruling, *Grutter* lacked endorsement whereas public sentiment supported *Gratz*. The split decision on the Equal Results Regime motivated Ward Connerly, a California civil rights activist, Jennifer Gratz, and others to support a Michigan referendum barring special treatment. The referendum passed by a 58–42% majority in 2006. The new law appeared to be consonant with the Fourteenth Amendment, it espoused impartiality and, as law, it claimed constitutive legitimacy (i.e., validity). It was supported by a majority of Michigan voters but it could not claim unanimous endorsement. Its “absolute legitimacy” was not established.

The battle to save and legitimize the Equal Results Regime continues in state and federal courts. On November 15, 2012 a federal appeals court ruled the Michigan law unconstitutional. Questions about the legitimacy of the Equal Results Regime that supports race-based *inequality* will be decided once again by the Supreme Court. Eight justices will decide a similar case involving undergraduate admissions (*Fisher v. University of Texas* 2011) during the Court's 2012–2013 session.<sup>25</sup> However, as the examination of this issue shows, if the Court's decision authorizes the Equal Results Regime it is unlikely to resolve the matter. The Equal Results Regime still violates the impartiality and consonance criteria of the Basic Legitimation Assumption and, without a more effective reeducation program (i.e., propaganda); the regime is unlikely to gain high levels of endorsement.

A Legitimacy Theory analysis of the Equal Results Regime shows how policies like those it initiates can create systematic inequality and reinforce existing inequalities. Returning to the *Grutter* decision, a majority on the Supreme Court authorized a policy of preferential admis-

sions. The Court used the goal of race and ethnic heterogeneity to justify its decision. However, the Court's decision is an implicit admission that many members of the *affected classes* would be denied admission under the standards applied to the general population. That admission communicates to the public-at-large that those who are helped need help. That is, their *inputs* (preparation, skills, abilities, etc.) are insufficient to secure admission. Moreover, the emphasis on group remedies increases the likelihood that others perceive their deficiencies as characteristics of the group rather than of individual members. Put simply, the policies, and administrative, legislative, and judicial support of them, create or reinforce race inequality through the activation of attribution, status generalization, social identity, and legitimacy processes (Walker 1999).

Looking at affirmative action policies through the lens of Legitimacy Theory also shows how authority figures can establish regimes that quickly achieve legitimacy. The Equal Opportunity Regime is an important example. The regime garners high levels of endorsement, motivates impartial policies, and is consonant with a variety of acknowledged legitimizing elements. Absent fundamental changes in the attitudes of U. S. citizens, the regime will ultimately prevail. As Justice O'Connor wrote in her defense of the Equal Results Regime “race conscious admissions policies *must* be limited in time... Enshrining a *permanent justification* for racial preferences would offend this fundamental equal protection principle [emphasis added].”

A Legitimacy Theory analysis of affirmative action regimes also reveals the complexity of phenomena that are often presented as “simple” choices. Moreover, analyses of this sort suggest how Legitimacy Theory can be used more fruitfully than it has been to date. President Obama and Joe the Plumber are both concerned about what is a fair or equitable system of taxation. To ask, “What is fair?” is an elliptical question that cannot be answered properly without recourse to legitimacy processes and Legitimacy Theory. What is fair for people who are governed by *and* attribute propriety to a legitimized Equal Opportunity Regime is clear. It is equally clear what is

<sup>25</sup> Justice Kagan, an Obama appointee, has recused herself from the case.

considered fair by those who are governed by and attribute propriety to a legitimized Equal Results Regime. Yet, answering a “What is fair?” question for those living under either regime fails to resolve the issue of which regime is fair—or the most fair. And that is the paradox of inequality and its legitimation.

Researchers often describe inequality as a social evil. Other researchers characterize inequality as a social benefit. Rarely is there unanimous endorsement of either position. The lack of unanimous agreement sows the seeds of legitimacy crises. Legitimacy processes shape and determine group reactions to what is constitutively legitimate (i.e., valid). Collectively-validated regimes also shape individuals’ attributions of propriety to those regimes. In turn, true to the tenets of social psychology, the aggregated attributions of individual group members (i.e., endorsement) partially determine what is collectively validated.

The extended scope of Legitimacy Theory suggests broad avenues of future research. The revised theory permits analysis of debates about important issues like affirmative action or tax policy as well as mundane issues concerning appropriate behavior at work or in other social settings. Elsewhere I argue (Simpson and Walker 2002; Walker 1999, 2004) that issues like these should be treated as instances of regimes that are either legitimized or seeking legitimacy. Legitimacy Theory implies that legitimizing inequality contributes to the stability of systems of inequality. Alternatively, legitimizing *equality* encourages delegitimizing and dismantling systems of invidious inequality. Consequently, common behaviors that reflect, reduce or sustain systematic inequalities are grist for the mill that is the multiple-source, multiple-object theory of legitimacy. The implications of this last statement are far reaching.

A majority of global disputes are questions not only of inequality of one sort or other but of the legitimacy of regimes that are supported by protagonists in those disputes. What is a fair allocation of territory in the Middle East? What role should government take, if any, in reducing inequalities among races, ethnic groups, or individuals? What role should developed countries

take in reducing inequalities among countries of the world? Should they promote democracy, give economic assistance or take a laissez faire approach? Should debates over U. S. tax policy be limited to more (President Obama) or less (Joe the Plumber) progressive taxation? Or should the debate be expanded to include alternatives to progressive taxation (e.g., flat income tax rates or taxes on consumption)? These questions center on regimes and their legitimation. But applications of Legitimacy Theory to practical matters can be extended beyond examination of competing regimes.

Legitimacy Theory can be applied to questions of tactics like some of those in the preceding paragraph just as McCarthy and Zald’s (1977) theory of resource mobilization implies. Proponents of a given regime can use Legitimacy Theory to decide which tactics are most effective in their campaigns to maintain or to achieve regime legitimacy. On one hand, proponents of the Equal Opportunity Regime in the U. S. ought to resist educational programs that tout the virtues of Marx’s dictum of “from each according to his abilities to each according to his needs” if they wish to sustain endorsement—and legitimacy—of their favored regime. The slogan is antithetical to their approach and their goals. On the other hand, proponents of an Equal Results Regime should also avoid references to Marx and fellow travelers as they try to build consensus for the regime. “Marxism,” “communism,” and “socialism” have negative connotations for many Americans (i.e., they lack propriety).

Similarly, those who promote an ever more progressive tax system should probably continue to cite the teachings of Jesus and suppress the origin of the quotation: “A government that robs Peter to pay Paul can always count on the support of Paul.” Today, many identify the slogan with the conservative President Ronald Reagan, a sworn enemy of politically liberal principles. As long as the slogan is attributed to him and treated as an enemy’s attack on a favored policy, it can remain an object of derision and ridicule.<sup>26</sup>

<sup>26</sup> Derision and ridicule have proved to be useful tactics in political contests. Their use is encouraged and legiti-

However, the conservative population's disdain for progressive taxation might be enhanced, liberal ardor for it might be dashed, and the future of progressive tax policy endangered, if the slogan was properly traced to Shaw (1944) one of the founders of Fabian socialism (Shaw 1889). The aphorism shows how elements that are invoked as acknowledged legitimizing elements can serve multiple purposes depending on which regime legitimizing formula is used to link them to which concrete ends. The Constitution and Declaration of Independence serve very different ends when they are employed in the service of the Equal Opportunity and Equal Results regimes.

This chapter ends by revising slightly and repeating a claim made earlier. Common and uncommon behaviors that increase, reflect, reduce or sustain systematic inequalities are grist for the mill that is Legitimacy Theory.

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## Appendix

This appendix is a verbatim transcript (*Tampa Bay Times* 2008) of an interchange between Senator Barack H. Obama, II, the 2008 Democratic Party presidential nominee, and Samuel J. Wurzelbacher a resident of Toledo, Ohio. The interchange took place on October 12, 2008 as Senator Obama took a walking tour of a Toledo neighborhood.

**Senator Barack H. Obama, II, (BHO):** What's your name?

**Samuel J. Wurzelbacher (SJW):** My name's Joe Wurzelbacher.

**BHO:** Good to see you, Joe.

**SJW:** I'm getting ready to buy a company that makes about \$ 250,000 . . . \$ 270–280,000 a year.

**BHO:** All right.

**SJW:** Your new tax plan's gonna tax me more, isn't it?

**BHO:** Well, here's what's gonna happen. If you're a small business which you would qualify as, first of all, you'd get a 50% tax credit, so you get a cut on taxes for your health care costs. So

you would actually get a tax cut on that front. If your revenue is above \$ 250,000, then from \$ 250,000 down, your taxes are gonna stay the same. It is true that for . . . say, from \$ 250,000 up, from \$ 250,000 to 300,000 or so . . .

**SJW:** Well, here's my question . . .

**BHO:** I just want to answer your question. So, for that additional amount, you'd go from 36 to 39%, which is what it was under Bill Clinton. And the reason we're doing that is because 95% of small businesses make less than \$ 250,000 so what I want to do is give them a tax cut. I want to give all these folks who are bus drivers, teachers, auto workers who make less . . . I want to give them a tax cut and so what we're doing is, we are saying that folks who make more than \$ 250,000 that that marginal amount above \$ 250,000, they're gonna be taxed at a 39 instead of a 36% rate.

**SJW:** Well, the reason why I ask you about the American Dream I mean, I work hard. I'm a plumber, I work 10–12 hours a day . . .

**BHO:** Absolutely.

**SJW:** . . . and I'm, you know, buying this company and I'm gonna continue to work that way. Now, if I buy another truck and adding something else to it and, you know, build the company, you know, I'm getting taxed more and more while fulfilling the American Dream.

**BHO:** Well, here's a way of thinking about it. How long have you been a plumber? How long have you been working?

**SJW:** 15 years.

**BHO:** Okay. So, over the last 15 years, when you weren't making \$ 250,000, you would have been getting a tax cut from me. So you'd actually have more money, which means you would have saved more, which means that you would have gotten to the point where you could build your small business quicker than under the current tax code. So there are two ways of looking at it. I mean, one way of looking at it is, now that you've become more successful . . .

**SJW:** Through hard work.

**BHO:** Y through hard work, you don't want to be taxed as much.

**SJW:** Exactly.

**BHO:** Which I understand. But another way of looking at it is, 95% of folks who are making less

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mized in some circles by the fifth rule of power tactics put forward in Alinsky's (1971, p. 128) handbook for community organizers: "Ridicule is man's most potent weapon."

than \$ 250,000, they may be working hard, too, but they're being taxed at a higher rate than they would be under mine. So what I'm doing is . . . you know, put yourself back 10 years ago when you were only making whatever . . . \$ 60,000 or \$ 70,000. Under my tax plan, you would be keeping more of your paycheck, you'd be spending lower taxes, which means that you would have saved and gotten to the point where you are faster. Now, look, nobody likes high taxes, right? Of course not. But what's happened is that we end up . . . we've cut taxes a lot for folks like me who make a lot more than \$ 250,000. We haven't given a break to folks who make less and, as a consequence, the average wage and income for just ordinary folks, the vast majority of Americans, has actually gone down over the last 8 years. So all I want to do is . . . I've got a tax cut. The only thing that changes is, I'm going to cut taxes a little bit more for the folks who are most in need, and for the 5% of the folks who are doing very well, even though they've been working hard . . . and I understand that; I appreciate that . . . I just want to make sure that they're paying a little bit more in order to pay for those other tax cuts. Now, I respect your disagreement, but I just want you to be clear. It's not that I want to punish your success. I just want to make sure that everybody who is behind you, that they've got a chance at success, too.

**SJW:** It seems like you'd be welcome to a flat tax then.

**BHO:** You know, I would be open to it except for . . . here's the problem with the flat tax. If you actually put a flat tax together, you'd probably . . . in order for it to work and replace all the revenue that we've got, you'd probably end up having to make it like about a 40% sales tax. I mean, the value added, making it up. Now, some people say 23 or 25, but, in truth, when you add up all the revenue that would need to be raised, you'd have to slap on a whole bunch of sales taxes on it. And I do believe that for folks like me who are, you know, have worked hard but, frankly, also been lucky, I don't mind paying just a little bit more than the waitress who I just met over there, who's . . . things are slow and she can barely make the rent. Because my attitude is that if the economy's good for folks from the bottom up,

it's gonna be good for everybody. If you've got a plumbing business, you're gonna be better off if you've got a whole bunch of customers who can afford to hire you. And right now, everybody's so pinched that business is bad for everybody. And I think when you spread the wealth around, it's good for everybody. But, listen, I respect what you do and I respect your question. And even if I don't get your vote, I'm still gonna be working hard on your behalf 'cause I want to make sure . . . small businesses are what creates jobs in this country and I want to encourage it. All right. (applause) One other thing I didn't mention. For small-business people, I'm gonna eliminate the capital gains tax, so what it means is if your business succeeds and let's say you take it from a \$ 250,000 business to a \$ 500,000 business, that capital gains that you get, we're not gonna tax you on it 'cause I want you to grow more so you're actually going . . . you may end up . . . I'd have to look at your particular business but you might end up paying lower taxes under my plan and my approach than under John McCain's plan. I can't guarantee that 'cause I'd have to take a look at your business.

**SJW:** Okay, I understand that.

**BHO:** All right. Thanks for the question, though. I appreciate it. Okay, guys, I gotta get out here. I've gotta go prepare for this debate. But that was pretty good timing. Thanks. (Last modified: Oct 23, 2008 07:11 PM)

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