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Book review

**Adam Crawford and Anthea Hucklesby (eds) (2013) *Legitimacy and compliance in Criminal Justice*. Abingdon: Routledge.
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‘The rule of law and justice institutions are in a sense legitimate by definition (they are authorised by law) but whether they are perceived as having legitimacy in the sense of deserving compliance and respect will depend on such factors as the integrity of procedures, respectful processes, and fairness of treatment and outcomes’ (Faulkner and Burnett 2012). This excellent and authoritative collection makes a valuable contribution to understanding the normative and social dimensions in which legitimacy and compliance shape our thinking about ways of enhancing regulation and fostering conformity with perceived social norms. The practical implications of procedural justice and perceived legitimacy within the context of policing are the focus first two chapters in this collection. Tom Tyler, who is perhaps most closely associated with notions of procedural justice, engages with the paradox that public trust and confidence in the police in the United States has remained only ‘moderately positive’ despite improvements in performance and professionalism. He argues that that the police will only secure public support if they are seen as legitimate in their inter-actions with them. Perhaps one of the most remarkable findings of Tyler’s study is that people’s willingness to accept decisions was far more equated with their perceptions of having received fair treatment rather than whether or not the objective outcome was favourable. According to Tyler each encounter between police and public should therefore be viewed as a ‘teachable moment’ whereby the public learns something about the law and legal authorities and as such procedural justice values need to be embedded in everyday police work. In the second chapter, Jon Jackson, Ben Bradford, Mike Hough and Katherine Murray use empirical data to test the operation of procedural justice theory to policing, linking these ideas to the relationship between legitimate policing and public commitments to the rule of law. Although concurring with Tyler that applying procedural justice approaches to policing is likely to pay dividends in terms of increased compliance they also warn that granting legitimacy to the police and courts gives them the authority to define what constitutes proper behaviour regardless of the morality of the act and as such there may be a significant gap between theory and practice. What binds both of these initial contributions together is a belief that

models of crime control based on sanction and force are not only misguided but also unproductive as a means of reducing offending and promoting compliance with the rule of law.

David Garland (2001) had adroitly highlighted how a lack of confidence in penal-welfarism 'has re-established the legitimacy of an explicitly retributive discourse which in turn, has made it easier for politicians and legislators to openly express punitive sentiments and to enact even more draconian laws (p.117). The underlying assumption of a less tolerant and increasingly punitive public is challenged here by Sonja Snacken in her discussions of the tensions that arise between human rights, the rule of law and democracy. Using range of examples including the death penalty and prisoners' and victims' rights to demonstrate that the public is less punitive than is often portrayed and concludes the governments and politicians would be able to implement less punitive penal policies without compromising political legitimacy. The chapters by Doreen McBarnet and Valerie Braithwaite further extend the discussion beyond the criminal justice system through their examinations of the legitimacy and compliance issues raised by the banking crisis and payment of tax, respectively. Both authors draw attention to the important distinction between compliance and cooperation. The financial crisis of 2008 has been portrayed as lax regulation but Doreen McBarnet suggests that regardless of how the regulatory systems had been formulated the outcome was likely to have been the same. In order to gain competitive advantage big business were able to subvert, the legal constraints and regulatory frameworks placed upon them and utilise the law to suit their own interests. As a result the regulatory systems were insufficient to comprehend the risks involved given the complex and opaque securitisation transactions behind the banking crisis. She uses empirical data to support her argument that big business focuses its efforts on frustrating the purpose of the law whilst technically complying with it using a process which she terms 'legal engineering'. Likewise, Valerie Braithwaite in her chapter on tax avoidance utilises empirical findings to demonstrate the complexities involved in gaining the cooperation and not just the compliance of tax payers and why a 'one size fits all' regulatory strategy is likely to fail She demonstrates why regulation is both a costly and a difficult enterprise in the face of forms of defiance in which people seek to protect their freedom. Understanding and appreciating such strategies is therefore pivotal in designing responsive modes of regulation. She concludes by arguing that forms of regulation that provide opportunities for negotiation, the exchange of views and mutual understanding are more likely to overcome problems of non-cooperation.

The final four chapters of this edited collection will be of particular interest to those interested in the delivery of community sanctions and measures. Drawing on Bottoms' (2001) distinction between short term compliance (where the individual abides by the restrictions and/or obligations placed upon them by the sentence) and long-term compliance (which is more related to whether the individual reoffends and abides by the law more generally), Fergus McNeill and Gwen Robinson suggest that offenders' views of the legitimacy of community sentences are particularly important in fostering active engagement with community sentences rather than simply formal compliance. They introduce the notion of 'liquid legitimacy' to explain how the legitimacy of, and compliance with, community sentences changes over the course of orders and examine how both are built, maintained and

eroded during the lifetime of an order. Enforcement practices that privilege formal compliance over substantive engagement are identified by the authors as a significant threat to the legitimacy of community sanctions and to developing positive supervisory relationships. They conclude their discussion by suggesting that the style and approach taken by the practitioners is as, if not more important, than the formal content and structure of the sanction. However, they sound a cautionary note, warning that practitioners' scope for influencing is also constrained by the conditions in which they work which can serve to limit the quality and the authenticity of the practitioner's moral performance thus weakening their legitimacy. This latter point is highlighted in Anthea Hucklesby's empirical study of electronically monitored curfew orders. The author found that although there was a sense of shared values amongst those involved in implementing the sanction there were discernible differences in the working practices of the monitoring officers. The working environment of monitoring officers, their practices and their working credos shaped how they interacted with those individuals subject to the sanction and how thoroughly they approached their task. The author concludes that electronic monitoring technologies have the capacity to strengthen compliance but she also highlights the complexities in offenders' decisions to comply with many factors influencing their decisions. Taking up this theme, Mike Nellis argues that electronic monitoring was seen as a more demanding and tightly calibrated means of eliciting compliance than the softer, humanistic forms traditionally required in community sanctions. Tracing the development of new forms of techno-corrections, which he warns have not been fully understood or debated. He examines the potential moral and ethical issues raised by the use of implants by drawing on historical and contemporary materials and warns against complacency, urging us to actively debate and engage with the potential implications of these new developments which cannot and should not be dismissed as mere 'science-fiction'. In the final chapter, Adam Crawford explores issues of legitimacy and compliance within the context of anti-social behaviour interventions with young people. He considers the legitimacy of the multiple modes of intervention utilised by governmental authorities to change behaviour through mechanisms of compulsion and control. He argues that these new modes of regulation represent a challenge to the established legal principles of due process, proportionality and protections afforded to young people. Focussing on the assumptions about compliance that inform such technologies of control the author explores the different forms of compliance deployed in new civil preventive orders and questions notions of compliance with regard to young people.

The ethical and more issues raised by the various contributors are particularly salient and timely. In England and Wales, we are currently undergoing an unprecedented change in the delivery of community sanctions that will see approximately 70% of probation work transferred to private contractors as part of the government's plans for Transforming Rehabilitation (Ministry of Justice 2013). Substituting state responsibility for rehabilitation on the grounds of encouraging investment in order to generate private profits represents a fracture of the social contract between the state and its citizens upon which notions of legitimacy and compliance are ultimately grounded. Yet there has been scant public debate about the legitimacy of these developments or how they will be perceived by those subject to them. The contributions to this edited text are in the main dominated by an exploration of the relationship between state authorities and those subject to their sanctions and as such perhaps

only partially engage with the issues and challenges emerging from this changing penal landscape. Nevertheless, together they provide an important and insightful lens to advance theoretical and conceptual understandings of compliance and legitimacy within systems of crime control.

References

Garland, D. (2001) *The Culture of Control: Crime and Social Order in Contemporary Society*. Oxford University Press.

Ministry of Justice (2013) *Transforming Rehabilitation – a revolution in the way we manage offenders*. London: HMSO.

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