RULE OF LAW: A QUESTION OF LEGITIMACY

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SDG Target 16.3

“Ensuring rule of law at the national and international levels and ensuring equal access to justice for all.”
Rule of Law
‘Mind the Gap’

Two aspects of the ‘gap problem’:

a) Legal officials will ‘have their own routines and habits and ways of carrying out their...work’

b) It is ‘very much an open question how much of the official law is any part of the working consciousness of laypersons’.

Source: MacCormick (2007: 71-2)
Legitimacy: A Definition

Power that is *acknowledged as rightful* by relevant agents, who include power holders and their staff, those subject to the power and third parties whose support or recognition may help confirm it.

(Beetham 2013: 19)
Components of Legitimacy

- Lawfulness
- Effectiveness
- Distributive Justice
- Procedural Justice
Effectiveness

How responsive are institutions?

What works in promoting effectiveness?
Lawfulness

• Tackling ethical failures.
  – Avoidance of corruption/misconduct

• Promoting integrity.
Distributive Justice

Allocation of resources among groups or individuals (as between rich/poor, different ethnic groups, religious beliefs etc) with competing claims or needs.

Fairness of outcomes

*Under-enforcement* vs. *Over-enforcement*
Ferguson Police Dept., US.

- Available records show that canine officers have exclusively set their dogs against black individuals, often in cases where doing so was not justified by the danger presented.
- In every canine bite incident for which racial information is available, the person bitten was African American.

*US DoJ Report, 2015*
Procedure Justice

• Participation or ‘Voice’
  – That one’s “side of the story” has been considered when decisions are made

• Impartiality
  – Transparency decision-making based *facts*, not *personal biases*.

• Conveying Trustworthy Motives
  – Showing care and concern for citizens’ well-being.

• Dignity
  – Treatment with respect; uphold citizens’ rights
Tom Tyler on “Teachable Moments”

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

(2011: 257).
Stop and Frisk: New York
Figure 2. Repeat Domestic Violence and Police Fairness.

Source: Paternoster, et al.
However....

If we are to expect law enforcement officials to deliver actions as proposed, it is important for these officials themselves to believe in the legitimacy of their own roles and the laws to be enforced.
Self-Legitimacy

Power-holders' belief in, or recognition of, the legitimacy of their own individual authority or role.
Correlates of Self-Legitimacy

1. Personal and collective effectiveness
2. Culture of institutional integrity
3. Distributive Justice
4. Procedural Justice
   a) Fairness in decision-making
   b) Treating officials as *human beings*
PROFESSIONALISM
That's not my job.
An Institutional Legitimacy Context for Enforcement

**Self-Legitimacy**

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Conclusion

• How can enforcement officials create more legitimacy for their strategies?

• How can officials themselves increase their own legitimacy?
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Global Campaign for Violence Prevention
Geneva, 22 October 2015

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