

**Northwestern University School of Law**  
**Law and Economics Research Paper Series**  
**Research Paper No. 02-9**

Flouting the Law: Does Perceived Injustice  
Provoke General Non-Compliance?

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*April 2002*

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Nadler – April 1, 2002

**FLOUTING THE LAW:  
DOES PERCEIVED INJUSTICE PROVOKE GENERAL NON-COMPLIANCE?**

*JANICE NADLER\**

ABSTRACT

What happens when people's common sense view of justice diverges from the sense of justice they see enshrined in particular legal rules and legal outcomes? In particular, does the perception of one particular law as unjust make people less likely to comply with unrelated laws? This article reports an experiment that empirically tested the Flouting Thesis – the idea that the perceived justice of one law can influence the intention to comply with unrelated laws. Participants who were exposed to laws they perceived as unjust were more willing, as a general matter, to flout unrelated laws, compared to participants exposed to laws perceived as just. This willingness to disobey extended far beyond the unjust law in question, resulting in participants expressing plans to flout unrelated laws in their everyday lives (such as traffic violations, petty theft, and copyright restrictions). Factors contributing to the relationship between perceived injustice and flouting include the role of law in American popular culture, the expressive function of the law in producing compliance, and unconscious psychological processes that underlie the diminished willingness to comply with the law.

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\* Assistant Professor, Northwestern University School of Law; Research Fellow, American Bar Foundation. I am grateful to Rick Brooks, Dov Cohen, Jim Davis, Shari Diamond, Richard Farr, Russell Korobkin, Richard McAdams, & Leigh Thompson for helpful comments. I thank workshop participants at Colorado, Cornell, Illinois, Missouri, Northwestern, Texas, UCLA, and Wayne State for helpful comments on an early draft. I thank the American Bar Foundation for its financial support.

## I. INTRODUCTION

Do ordinary citizens flout the law in response to their perception that the legal system has failed to serve the interests of justice in a specific instance? The idea that general lawbreaking can emerge from a single unjust law or decision has intuitive appeal. For example, in 1992, the acquittal of four police officers who beat Rodney King touched off the worst civil unrest seen in any American city in nearly 30 years. The streets of Los Angeles became the site of chaos and lawlessness for four days, as citizens looted stores, destroyed property, assaulted and shot one another, and set fires to buildings. When it was over, more than fifty people were dead,<sup>1</sup> over 12,000 people were arrested,<sup>2</sup> and over 800 buildings were burned to the ground.<sup>3</sup> Undoubtedly, a complete explanation of the causes contributing to the community frustration expressed during this unrest and lawlessness are numerous and complex. However, there is no doubt that the perceived unjustness of the acquittals of the police officers was a “proximate” cause of the 1992 civil unrest in Los Angeles.<sup>4</sup>

Yet, the 1992 Los Angeles example is certainly extreme and somewhat anomalous. It raises more general questions – questions that are at bottom empirical -- about whether and under what circumstances citizens’ perceptions of injustice in the legal system lead to diminished deference to the law generally. When citizens perceive injustice in the law, what are the consequences for subsequent lawbreaking? Does perceived unjustness in our legal system --

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<sup>1</sup> Washington Post, April 28, 1997, Page A04, Scars Remain Five Years After Los Angeles Riots, by Lou Cannon.

<sup>2</sup> The Boston Globe, May 5, 1992, Page 13, Life Regains its Bustle in Los Angeles, by Diego Ribadeneira.

<sup>3</sup> Washington Post, *supra* note 1.

<sup>4</sup> The initial beating incident and subsequent trial were both widely publicized; the videotape of the beatings was played repeatedly in the months leading up to the trial; the jury’s decision to acquit the police officers was widely held to be unjust. *See* The Economist, April 22, 1992, Page 22, World Politics and Current Affairs; American

whether it be perceived in wrongful convictions or acquittals, excessive punitive damage awards, outmoded statutes, crack/powder cocaine sentencing disparities, or any other perceived legal injustice -- lead to greater willingness to flout the law in the everyday lives of ordinary people? Further, assuming that this is the case, does this flouting typically manifest itself not in mass unrest but in more subtle, lower-level, harder-to-detect ways, such as littering, speeding, tax cheating, and theft of services? I call this the Flouting Thesis.<sup>5</sup>

This article presents the first experimental evidence for the Flouting Thesis, and suggests that perceived<sup>6</sup> injustices in the legal system have subtle but pervasive influences on people's deference to and respect for the law in their everyday lives. Americans are culturally attentive to law, and are concerned when they perceive injustice in the legal system. When people perceive the legal system as unjust, the diminished respect for the legal system that follows can potentially destabilize the law-abiding behavior of ordinary people. Because people have reasons for obeying the law that are apart from the threat of sanctions, obedience to law is vulnerable to diminished respect produced by perceptions of injustice. Section II reports the results of a laboratory experiment suggesting that perceived legal injustice can reduce people's willingness to obey everyday laws like speed limits and copyright restrictions. Section III of the article

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Survey. For some, these feelings of injustice were so strong that they led to extreme frustration and anger, as evidenced by the sharp increase in lawbreaking over the next few days.

<sup>5</sup> The idea that there is a relationship between perceived injustice and non-compliance with the law is not a new one. *See, for example*, *Olmstead v. United States*, 277 U.S. 438, 485 (1928) (Brandeis, J., dissenting) (“If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy”); Tom Tyler, *Why People Obey the Law* (1990) (perceived legitimacy of legal authorities promotes compliance with the law); Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 Nw. U.L. Rev. 453 (1997)(when criminal law is perceived to be just it has greater power to gain compliance generally).

<sup>6</sup> I use the term “perceived injustice” throughout the paper because the focus of the paper is on justice **perceptions** of ordinary people. I make no assumptions about the actual justness of the underlying legal rules or legal outcomes that I discuss.

explores explanations for why perceived injustice in the legal system might cause citizens to have less deference for the law.

## II. EXPERIMENTAL EVIDENCE FOR THE FLOUTING THESIS

### *A. Background*

While there is little or no existing empirical evidence on the specific question of whether there is a causal connection between perceived injustice of a particular law and general noncompliance (that is, lower levels of general compliance with distinct laws), there is evidence on different but associated questions. First, people are most likely to obey laws that prohibit conduct they view as morally reprehensible. For example, one study found that people who felt strongly that a behavior prohibited by a particular criminal offense (for example, larceny) was morally wrong were least likely to report having committed that offense; likewise, people who felt less strongly that the offense was morally wrong were most likely to report having committed the offense.<sup>7</sup> In addition to moral attitudes about specific crimes, moral attitudes about the law in general predict compliance with particular laws. For example, feelings of obligation to obey the law (for example, “People should obey the law even if they disagree”) predict whether people will comply with laws governing everyday acts such as littering, making

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<sup>7</sup> See Matthew Silberman, *Toward a Theory of Criminal Deterrence*, 41 Am. Soc. Rev. 442, 445 (1976). Grasmick & Green surveyed people about their compliance with eight different criminal offenses and obtained similar findings; they found that moral commitment toward a particular law predicted self-reported compliance with that law. Harold G. Grasmick & Donald E. Green, *Legal Punishment, Social Disapproval, and Internalization as Inhibitors of Illegal Behavior*, 71 J. Crim. L. & Criminology, 325, 334 (1980).

noise, parking, and the like.<sup>8</sup> Note that this is a different question than the question of interest in this Article: variations in feelings of obligation to obey the law can arise for many different reasons, including pre-existing variations across individuals (due to personality factors). By contrast, the question of interest in this Article focuses on the problem of a particular law being perceived by an entire community as unjust, and the subsequent effects on not only feelings of obligation to obey the law, but also behavioral compliance with laws in general.

Perhaps most closely addressing the question of the relationship between perceived injustice in the law in a particular instance and more general attitudes about respect for the law and compliance is a survey study of tax compliance.<sup>9</sup> In it, people reported on both their own experiences they had with the IRS, and on second-hand information they had heard about the experiences with the IRS of friends, neighbors, and coworkers. Especially revealing were the attitudes of people who reported that a friend, neighbor, or coworker's contact with the IRS resulted in that person paying (in that person's view) more taxes than they legally owed. This type of vicarious experience with the IRS was associated with lower perceptions of fairness of the tax laws, and increased intentions to cheat on taxes in the future. In other words, if my friend

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<sup>8</sup> Tom R. Tyler, *Why People Obey the Law* 41-68 (1990). Compliance with the law in Tyler's study was associated with two main factors -- the extent to which people feel that the particular conduct prohibited by the law is morally wrong, and the extent to which people feel generally that the law is something that deserves respect and ought to be obeyed. The first factor -- moral attitude about the conduct underlying a particular law -- is associated with compliance with the law only to the extent that a person's moral attitude converges with the law with respect to the conduct in question. In this sense, moral judgments about particular laws can motivate people to comply with the law, but only selectively. To the extent that moral attitudes and the law diverge with respect to any particular conduct, compliance is less likely to follow.

One version of internalization of moral judgments holds that a person acquires a preference for conformity to a behavioral standard and incurs a psychological cost (for example, guilt) when that person violates the behavioral standard. This psychological cost occurs regardless of whether other people find out about the behavioral violation. See Robert Cooter, *Expressive Law and Economics*, 27 *J. Legal Stud.* 585 (1998).

tells me about an experience with the IRS that resulted in an unfair outcome, I will be more likely to perceive not only the IRS, but also the tax laws in general as unfair, and I will also be more likely to cheat on my own taxes in the future. These results suggest that exposure to reports of an unjust legal outcome in a particular situation might lead to lower perceived fairness of (or perhaps respect for) the law more generally, which in turn can lead to lower levels of compliance with the law in the future.

The conclusions to be drawn from the tax survey results are, however, limited in several respects. First, the data were correlational, so that the causal direction (if causation can be inferred at all) of the connection between exposure to a perceived unjust outcome and lower intentions to comply with the law is ambiguous. It might be that intention to cheat on one's own taxes produced an evaluation of others' experiences as unfair. Second, the tax survey study addressed the limited question of whether the perceived justness of an outcome relating to one law (or set of laws) is associated with lower future compliance with that same law (or set of laws) -- in this case, tax laws.<sup>10</sup> The claim I test in this Article, by contrast, is a stronger claim: perceived injustice of a particular law diminishes respect for the law in general, which is manifested in lower levels of compliance with other laws, even those distinct from and unrelated to the source of the perceived injustice. The experimental data reported below show empirically that perceptions of injustice in the law can trigger the very kind of lack of moral authority that leads to non-compliance, not only with the unjust law in question but more generally and with

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<sup>9</sup> See, Karyl A. Kinsey, *Deterrence and Alienation Effects of IRS Enforcement: An analysis of Survey Data*, in *Why People Pay Taxes: Tax Compliance and Enforcement* 264-276 (Joel Slemrod ed., 1992).

<sup>10</sup> *Id.*

respect to other unrelated laws. In other words, perceived injustice in a legal rule triggers general flouting of the law in everyday life (The Flouting Thesis).

*B. Experimental Method and Results*

An experiment was designed and run to test the Flouting Thesis. According to the Flouting Thesis, holding the belief that a particular law is unjust increases the likelihood of flouting the law in one's own daily life (even laws that are unrelated to the unjust law in question); conversely, the absence of perceived injustice should not increase flouting behavior. The absence of increased flouting behavior can be thought of as the baseline level of compliance with the law that is maintained when the community's moral views and the requirements of the law are matched just closely enough so that the law is generally viewed as a legitimate moral authority. This baseline level of compliance is maintained by the existence of social norms that continually serve as a check on individual behavior. Social norms specify, implicitly, the moral rules of the group, and motivate action by promising social rewards and punishments.<sup>11</sup> Thus, people seated on a crowded public bus often feel obligated to offer their seat to an elderly person who is standing, even where there is no rule requiring them to do so. Or, people who win a substantial sum of money playing the lottery might feel obligated to share part of it by providing financial assistance to family members and close friends, again even in the absence of any explicit rule requiring them to do so. In the absence of a strong social norm governing a particular behavior, the law can serve as a guide for how to behave, but only if the law is morally credible.

In the experiment, a set of ostensible proposed legislation designed to elicit an attitude of either perceived justice or perceived injustice was presented to participants. By carefully varying the description of the ostensible legislation, I ensured (through pilot testing) that participants perceived the laws in question as basically unjust (treatment group) or as basically just (control group). According to the Flouting Thesis, these attitudes regarding the perceived justness of laws will diminish participants' willingness to comply with different, unrelated laws.

Thus, the predictions of the Flouting Thesis focus essentially on a set of behavioral results: compliance with the law. At the same time, the predictive variable of the Flouting Thesis is a set of attitudes: attitudes about the injustice of specific laws. Generally speaking, however, the relationship between attitudes and behavior is not always straightforward. Indeed, the conditions under which people exhibit consistency between their attitudes and their behavior is a question that social psychologists continue to debate. One of the factors upon which the relevant behavioral response depends is the accessibility of the attitude in question. The more accessible an attitude is in memory, the more likely the attitude will influence the cognitive structure of the behavioral event in question, and thus the more likely a response will follow that is behaviorally congruent with the attitude.<sup>12</sup> In the context of perceptions of the law, the extent to which an attitude about the justness or unjustness of a particular law affects compliance behavior may depend on the extent to which that attitude is accessible. In other words, the more salient an attitude is in memory, the more likely the resulting response will be attitudinally congruent.

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<sup>11</sup> See Robert Cialdini, Carl Kallgren, & Raymond Reno, *A Focus Theory of Normative Conduct: A Theoretical Refinement and Reevaluation of the Role of Norms in Human Behavior*, 24 *Advances Experimental Soc. Psychol.* 201, 203 (1991).

<sup>12</sup> See, Russell H. Fazio, *How do Attitudes Guide Behavior?*, in *Handbook of Motivation and Cognition: Foundations of Social Behavior* 204-243 (Richard M. Sorrentino & E.Tory Higgins eds., 1986).

Thus, for the purposes of this experiment, it was important to ensure the salience in memory of the attitudes in question. To test the hypothesis that the perception of an unjust law can influence general compliance behavior, the method employed in this experiment attempted to make salient in memory the perceived justness of the law in question. For this reason, this study used a priming method in which the attitude is called to mind, and is accessible at the time compliance behavior is measured.<sup>13</sup>

This experiment consists of two parts. First, participants were exposed to a set of laws (perceived as either just or unjust) in the form of newspaper stories. Then, in an ostensibly separate study, participants indicated their willingness to engage in future non-compliance with a set of unrelated laws. Willingness to engage in non-compliance (flouting) was measured using a questionnaire focusing on intentions to engage in fairly common, but legally prohibited, acts.

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<sup>13</sup> A prime is a means of accessing or activating stored thoughts and concepts.

Newspaper stories were chosen as the format for presentation of laws in the first part of the experiment for several reasons. First, material presented in a newspaper story format has appeal as a current event item and is therefore more likely to engage participant interest compared to the sometimes dense language contained in legal statutes. Indeed, other research in which participants read newspaper stories about current events has demonstrated that this method can increase participants' societal-level concern about the problem at hand.<sup>14</sup> Second, newspaper stories provided a convenient cover story for the first part of the experiment, in that participants were told that the experimenters were interested in their emotional reactions to quality of the writing and the style of journalism in the news stories. In the absence of such a cover story, participants might be left to speculate about the purpose of reading legal statutes. Toward this end, participants were presented with a set of six news stories, three of which focused on a legal issue, and the remaining three did not. The three news stories describing legal statutes were interspersed with the non-legal news stories, thus focusing attention away from the purely legal nature of the task.

The participants were 98 undergraduate students.<sup>15</sup> Upon entering the laboratory and signing a consent form, participants were informed that they would be participating in a study on the role of emotions in attitudes about news stories. Participants each read a set of six articles that were ostensibly newspaper stories.<sup>16</sup> Three of these were filler stories (on NASA, oil drilling, and movie ushers), and three were stories describing legislation. The filler stories were

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<sup>14</sup> See, Tom R. Tyler & Fay L. Cook, *The Mass Media and Judgments of Risk: Distinguishing Impact on Personal and Societal Level Judgments*, 47 J. Pers. & Soc. Psychol. 693 (1984).

<sup>15</sup> Of these participants, there were 54 females, 44 males, 27 African-Americans, 24 Asians or Asian-Americans, 23 Hispanics, 22 whites, and 2 self-designated as "other".

<sup>16</sup> The length of all stories was kept constant at approximately 500 words.

identical in content for all participants. By contrast, there were two versions of the three law-related stories – one set of stories was designed to elicit a perception that the laws described therein are just (Just Prime condition), and the other set was designed to elicit a perception that the laws described therein are unjust (Unjust Prime condition). Each version varied slightly from its counterpart in content depending on experimental condition. The basic topics of the law related stories are illustrated in Table 1. Perceived justness was manipulated by varying each story’s emphasis, as follows:

Table 1. Content of Newspaper Stories Containing Primes

<b>NEWS STORY</b>	<b>General Emphasis (both versions)</b>	<b>Just Prime Version</b>	<b>Unjust Prime Version</b>
<b>Civil Forfeiture</b>	Purpose and application of (actual) laws permitting the government to seize property under certain circumstances	Emphasized the law-enforcement benefits of civil forfeiture laws	Emphasized the civil liberties concerns surrounding civil forfeiture laws
<b>Income Tax</b>	Proposed legislation ostensibly pending before Congress that would affect the amount of income tax paid by middle-class taxpayers	Emphasized positive effects for income tax paid by middle-class people	Emphasized negative effects for income tax paid by middle-class people
<b>Landlord/Tenant</b>	Proposed legislation ostensibly pending before the state legislature that would permit landlords to conduct warrantless searches of tenants’ apartments under certain circumstances	Emphasized importance of empowering landlords to evict drug dealing tenants	Emphasized the civil liberties and privacy concerns in permitting searches of tenants’ apartments

A pilot test of the materials using different participants indicated that the legal rules described in the three law-related newspaper stories presented in the Just Prime condition were

perceived to be significantly more just, on average, than those presented in the Unjust Prime condition.<sup>17</sup>

Participants were randomly assigned to the Just Prime or Unjust Prime condition. In the Just Prime condition, the stories in the packet contained the Just version of the three law-related stories along with the three filler stories. In the Unjust Prime condition, the stories in the packet contained the Unjust version of the three law-related stories along with the three filler stories. In both versions, the stories in the packet alternated between the filler stories and law-related stories.

After reading each story, participants answered a “quiz” question, to ensure they actually read the story. In addition, following each story participants filled out a questionnaire assessing their reaction to the story they just read. The experimenter then collected all materials, thanked the participants, and left the room.

Shortly after the first experimenter left, a different experimenter entered the room and asked participants to sign a different consent form, explaining that they would be asked to participate in a second short experiment. After completing a short filler task, participants completed the Likelihood of Criminal Behavior Questionnaire. In this questionnaire, participants were asked to indicate the likelihood (from 0% to 100%) that they would engage in a variety of illegal behaviors. These items consisted of: drunk driving; parking in a no-parking zone; failing to pay taxes; making illegal copies of software; eating a small item without paying in the grocery store; exceeding the posted speed limit; drinking alcohol under age 21; and taking

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<sup>17</sup> Eighty-eight undergraduate psychology students participated in the pilot study. Each participant read one version of each of the three articles, and rated the extent to which the law described in the article was either just or unjust

home office supplies for personal use. A reliability analysis (Cronbach's Alpha) indicated that the eight questionnaire items could be combined into a single measure of Likelihood of Criminal Behavior,<sup>18</sup> which was computed by summing scores across items.

Prior to being debriefed, participants completed an Exit Questionnaire designed to determine whether participants were suspicious that the two parts of the experiment were related. The questionnaire asked participants to indicate how many studies they participated in during the course of the hour, the purpose of the studies, and the possible relationship between the studies. An examination of the Exit Questionnaire responses revealed that none of the participants were suspicious as to the priming function of the first part of the experiment. Specifically, in response to the question about how many experiments they had participated in, 100% of the participants indicated that they had participated in two experiments. In response to the question about the purpose of the studies, 0% of the participants indicated they thought there was any possible connection between the two tasks. Finally, in response to the question about whether they thought their responses in the first study could have affected their judgments in the second study, all but two participants responded "No".<sup>19</sup>

The standardized<sup>20</sup> Likelihood of Criminal Behavior Index scores ranged from -11.95 to 12.38. On average, these scores differed significantly across the Prime conditions. Overall,

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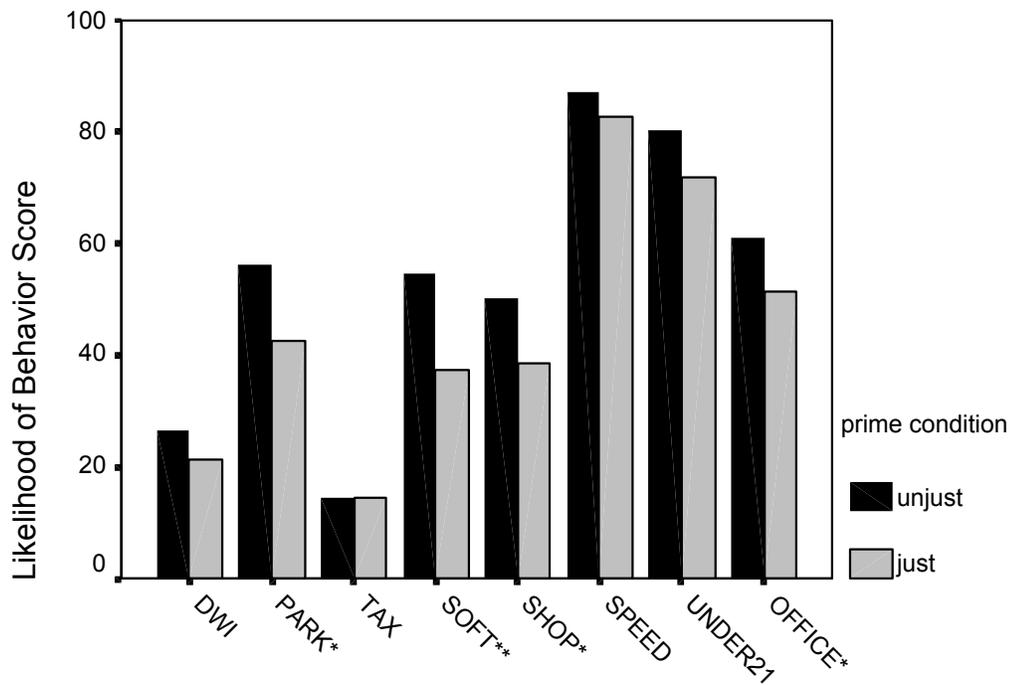
(1=extremely unjust; 9=extremely just). Mean ratings in the Just Prime condition (M=5.05) were significantly higher than mean ratings in the Unjust Prime condition (M=2.95);  $t(86) = -9.25$ ;  $p < .0001$

<sup>18</sup> Cronbach's  $\alpha = .82$

<sup>19</sup> The two respondents who answered affirmatively indicated only that their participation in the first study made them tired and impatient, so that they responded very quickly in the second study. There was no indication from these two respondents an awareness of a substantive influence of the first study on their responses in the second study.

<sup>20</sup> Scores were standardized prior to being combined in order to account for differences in measurement scales across variables.

participants exposed to newspaper stories describing laws perceived as unjust indicated a greater willingness to engage in criminal behavior ( $M = 1.15$ ) compared to participants exposed to laws perceived as just ( $M = -0.97$ ).<sup>21</sup> An analysis of each individual questionnaire item reveals that, although not consistently significantly different, there is an overall trend (with the exception of the tax item)<sup>22</sup> for participants primed with unjust laws to indicate a greater likelihood of engaging in each criminal behavior on the questionnaire. This is illustrated in



\*  $p < .10$

\*\*  $p < .05$

Figure 1.

Consistent with the Flouting Hypothesis, people exposed to three newspaper stories describing perceived unjust laws are more willing to park illegally, copy unlicensed software,

<sup>21</sup>  $t(96) = 2.02; p < .05$ .

consume grocery items without paying, and pilfer office supplies, compared to those exposed to perceived just laws. Thus, exposure to a legal rule generally perceived to be unjust leads to personal estimations of a greater likelihood of expressed willingness to engage in unrelated future criminal behavior.

It is notable is that the exposure to perceived unjust laws was minimal in this experiment -- the task of reading all six news items, and answering the quiz and filler questions was completed in less than 35 minutes. Yet, this short exposure was sufficient to significantly impact participants' expressed willingness to engage in unlawful behaviors in their everyday lives. In addition, participants were apparently unaware of the influence that the newspaper stories had on their willingness to comply with the law. It is also important to note here that the laws that people were willing to disobey were unrelated to the laws they read about previously in the newspaper stories. The effect observed here spreads from the specific to the general.

How could it be the case that brief exposure to perceived injustice causes people to be less willing to comply with laws that regulate their everyday behavior? In the next section, I consider various mechanisms and explanations that account for the influence of perceived injustice on general non-compliance

### III. PERCEIVED INJUSTICE IN THE LAW AND ITS CONSEQUENCES

Can perceived legal injustices result in lower respect for the law generally? The experimental evidence presented here suggests that it can. Real life events also suggest that this is the case. Consider, for example, the O.J. Simpson verdict, considered to be just by some, but

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<sup>22</sup>Note that participants were undergraduate students, with a mean age of 18.7. Most of them probably have had little or no experience in filing an income tax return.

strongly opposed by many others. Among the opponents of the verdict, sentiments such as the following were representative shortly after the verdict:

The guy is as guilty as sin. . . . This trial was a big fraud.<sup>23</sup>

O.J. Simpson got to go home to his big king size bed where he used to beat his wife. . . . I'm getting to a point where I even question my belief in God.<sup>24</sup>

Because of the intense media interest focused on the O.J. Simpson case, many people had a strong opinion about the justness of the verdict. For those who perceived the verdict as unjust, these perceptions were associated with broader perceptions about the criminal justice system and the law. For example, a Los Angeles Times poll conducted just after the Simpson verdict indicated that a full 70% of Los Angeles residents had “only some” or “very little” confidence in the criminal justice system. Examples such as the public reaction to the trials of the Rodney King police officers and of O.J. Simpson suggest that perceived injustice in the law can lead to lowered respect for and compliance with the law. And experimental evidence suggests that cases perceived as having been wrongly decided, and laws perceived to be poorly conceived or downright foolish, can lead to lowered respect for law generally and greater willingness to flout it, even in unrelated domains.

What accounts for the influence of perceived injustice on willingness to flout the law in everyday life? In this section, I point to several different factors that contribute to flouting. The first is the uniquely American influence of law on the popular imagination. Second, the expressive ability of the law to gain compliance (apart from threatened punishment) is

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<sup>23</sup> Al [last name withheld]. Interviewed on NPR's *All Things Considered*, 10/12/95.

<sup>24</sup> Cheryl [last name withheld]. Interviewed on NPR's *All Things Considered*, 10/12/95.

compromised when perceived unjust legal results cause the law to lose its credibility as a legitimate source of community values. Finally, the psychological mechanisms that drive the relationship between perceived unjust laws and general non-compliance operate – at least in part -- on a level beneath conscious awareness, making flouting a difficult problem to address. I discuss these factors in turn.

*A. The Influence of Popular Culture on Attention to Perceived Legal Injustice*

In the United States, popular culture is heavily influenced by law and the legal system. Even as early as the nineteenth century, Alexis de Tocqueville noted the close connection between American law and American culture:

As most public men are or have formerly been lawyers, they bring the usages and the turn of ideas that are their own into the handling of affairs. The jury serves to familiarize all classes with them. Judicial language thus becomes in a way the vulgar tongue; the spirit of the lawyer, born inside the schools and the courts, therefore spreads little by little beyond their precincts; it so to speak infiltrates all society, it descends into the lowest ranks...<sup>25</sup>

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<sup>25</sup> Alexis de Tocqueville, *Democracy in America*, eds. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), p. 258.

The propensity of the law to inhabit the popular imagination in the United States is more evident today than ever before.<sup>26</sup> Hundreds of movies involve portrayals of trials. Of the 66 prime-time television programs in the 2001 lineup of the three major television networks, 25% focused on law, lawyers, or criminal justice, not including news magazines (for example 60 Minutes, 20/20) that regularly focus on legal topics. There is at least one cable television station (Court TV) that is devoted entirely to legal topics. Scores of best-selling novels are based on legal topics, and print news magazines and newspapers also devote a significant portion of space to law related stories.<sup>27</sup> Stories and shows about the law have a broad popular appeal in the United States.

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<sup>26</sup> See Chase, *Toward a Legal Theory of Popular Culture*, 1986 Wis. L. Rev. 527 (1986); Macaulay, *Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports*, 21 Law & Soc’y Rev. 185 (1987). Richard Sherwin has argued that law and popular culture have become so intertwined that the distinction between reality and fiction has, to a large extent, collapsed. Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line Between Law and Popular Culture* ix-x (2000). Sherwin illustrates his point with the example of the videotaped grand jury testimony of President Clinton in which he defended himself against charges that he lied under oath about his sexual conduct with a young White House intern. The television broadcast of the testimony, viewed by millions of people, was featured in an article in the New York Times the following day, written by the paper’s movie critic, who drew comparisons between the President’s testimony and the film *My Dinner With Andre*. (The New York Times, September 22, 1998, Section A; Page 16, *The Testing of a President : In the Camera’s Eye—Critic’s Notebook*, by Caryn James).

<sup>27</sup> Occasionally, a case captures the popular imagination (or at least the imagination of television producers and newspaper editors) and garners an extraordinary amount of coverage. For example, for the nine months that the O.J. Simpson trial lasted, one was hard pressed to avoid the case. The trial itself was broadcast on every major television network on a daily basis for 133 days (displacing devotees of soap operas and other popular daytime shows). Time, May 29, 1995 Volume 145, No. 22, *Soap Operas: The Old and the Desperate*, by Gina Bellafante); coverage of the trial was recapped on the news nearly every night, newspapers covered the trial on a daily basis, and at the moment the verdict was announced, 150 million people were glued to their tv sets (even though it occurred in the middle of the work day).

Law related television dramas, news shows, newspapers articles, and novels tend to highlight certain aspects of the law (for example, violent crime, consumer fraud, trials, prisons) and ignore others for dramatic effect. As a result, there is a natural focus on whether justice is done. Viewers and readers naturally want to know, did the person or people depicted get what they deserve? The interests of justice are focal regardless of whether the story is criminal or civil. In either case, people notice whether the legal system is depicted as regulating behavior in a way that makes sense, or conversely, whether the legal system is portrayed as imposing arbitrary demands or unfairly exempting people from punishment. When the legal system is portrayed as failing to serve the interests of justice (whether in a drama or in news reporting on real laws or cases), the effects might reach farther than the particular law or legal procedure that is the focus of the show or news story. A portrayal of injustice in the legal system may cause people to question the integrity of not only the particular law, or judge, or jury, or attorney portrayed, but may also cause people to call into question the integrity of the legal system itself.

The cultural influences that lead people to question the integrity of legal system have consequences that emerge behaviorally – that is, people might violate the law more than they would have if they did not question the law’s integrity. In the next section, I will argue that compliance decisions are supported and sustained by community norms of commonsense justice. In the context of a general perception that the legal system is generally just, these norms nourish a baseline level of behavioral compliance with the law. But if the delicate balance that encourages compliance is disturbed, these same community norms can influence attitudes in a way that encourages decisions to not comply.

*B. Expressive Law, Perceived Injustice, and Compliance*

The delicate balance that promotes compliance is assisted enormously by the fact that much of the time, the law accurately reflects prevalent mores about permissible behavior.<sup>28</sup> Thus, criminal law prohibits murder, rape, robbery, larceny, and a host of other acts, the propriety of which almost everyone agrees about. The general convergence of the requirements of the law and commonsense justice means that most people comply with the law most of the time, because they would have refrained from doing the prohibited act quite apart from the existence of its legally prohibited status. People generally refrain from legally prohibited acts like murder, rape, and robbery, and the fact that most people have no impulse to engage in these acts seems to be quite independent of their legal status.

On the other hand, people also refrain from legally prohibited acts that they may be genuinely tempted to engage in, such as certain traffic offenses (for example, driving through a red light at an empty intersection), or offenses against other persons (for example, punching someone who (we feel) really deserves it). In declaring conduct to be prohibited, the law expresses social disapproval of that conduct. That the law is seen as an expression of common mores can itself strengthen people's commitment to acting legally—even when the fear of punishment is absent.<sup>29</sup> And such moral commitments can operate even on people who have not internalized them, through social pressure to avoid loss of esteem in others' eyes that would result from engaging in prohibited conduct.<sup>30</sup> In this way, the law itself informs people's ideas

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<sup>28</sup> See Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 Or. L. Rev. 339, 375 (2000).

<sup>29</sup> *Id.*

<sup>30</sup> See Johannes Andenaes, *Punishment and Deterrence* 112 (1974); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 Mich. L. Rev. 338,355 (1997). McAdams argues that we generally seek the esteem (good opinion, respect) of others. So long as there is a consensus about the esteem-worthiness of engaging in a particular behavior, and so long as people know that there is some risk of detection if they engage in that behavior, then a social norm can arise governing the behavior. There is some empirical support for this notion.

about moral and immoral behavior. Democratically produced legislation, for example, can be perceived as a signal of community norms about behavior.<sup>31</sup> To some extent, people obey the law because they feel they owe a general obligation to legitimate authority.<sup>32</sup> If the law is generally seen as accurately reflecting community norms, it is intuitively plausible that people will be more inclined to defer to it as a moral authority.<sup>33</sup> Under these circumstances, the very labeling of a certain act as criminal might make people more aware of the socially harmful quality of that act.<sup>34</sup> For example, before the existence of severe criminal punishments for drunk driving, many people were unaware that drunk driving had such grave consequences. It may be

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The threat of peer disapproval exerts a significant influence on self-reported decisions to engage in a criminal offense. See Grasmick & Green, *supra* note 7.

This idea of norm-regulated behavior is also captured in Fishbein & Ajzen's theory of reasoned action, which takes into account "subjective norm" in modeling the attitude-behavior relation. According to the theory of reasoned action, the most important predictor of behavior, intention, is in turn determined by a person's attitude toward the behavior and by the subjective norm. The subjective norm is simply my perception that relevant others in my social environment expect me to behave in a certain way. Thus, if I behave in a manner contrary to social expectations, I can expect negative social consequences. See Martin Fishbein & Icek Ajzen, *Belief, Attitude, Intention, and Behavior: An Introduction to Theory and Research* (1975).

Of course, social norms vary across cultures and populations. The sociologist Elijah Anderson has argued that among inner-city African-American youth, there is a code of the street that is centered on the issue of respect. See Elijah Anderson, *Code of the Street: Decency, Violence, and the Moral Lie of the Inner City*, 273 *Atlantic Monthly* 81, 88 (1999). As a result of this code of respect, a person must maintain an appearance (including clothing, gait, facial and verbal expression) that communicates willingness to engage in violence when necessary, must be willing to engage in the violent resolution of disputes, and must be willing to seek revenge in the event of a threat to one's self-esteem, all to ensure that respect is secured and maintained.

As another example, norms motivated by fear of peer stigma regarding honor and violence differ between the Southern and Northern U.S. See Dov Cohen et al., *When You Call Me That, Smile! How Norms for Politeness, Interactions Styles, and Aggression Work Together in Southern Culture*, 62 *Soc. Psychol. Q.* 257 (1999). Southern white males follow norms of honor, whereby they feel that if they do not respond to an insult, others will view them as less manly. Because this Southern culture of honor has features that involve undercurrents of violence, norms of politeness and hospitality have evolved in the South that function to keep conflicts below the surface. Thus, the behavioral ritual of using anger, rudeness, biting humor, and insults as warning mechanisms for curbing others' offensive behaviors is more commonly observed in the North. In sum, although there may be variation in social norms across sub-populations, they nonetheless play an important causal role in explaining factors that motivate behaviors that are observed with regularity within a community.

<sup>31</sup> See McAdams, *supra* note 28.

<sup>32</sup> Tom R. Tyler, *Why People Obey the Law* 41-68 (1990).

<sup>33</sup> See, for example, Robinson & Darley, *supra* note 5.

<sup>34</sup> See Andenaes, *supra* note 30.

that drunk driving is increasingly considered in moral terms precisely because it has been labeled criminal.<sup>35</sup>

Thus, laws that plausibly signal community attitudes result in deference and compliance, even if the value expressed had not been previously internalized by all members of the community, as in the drunk driving example. However, laws that are perceived as completely implausible signals of community attitudes -- that is, laws that strike people as so far off the mark that they could not possibly represent what the community believes or values -- often have different effects. If the law is seen as imposing unjust or immoral obligations, then rather than signaling community attitudes, the law instead might be perceived as irrelevant, and intuitively, there would be little reason to defer to it as a moral authority.<sup>36</sup> If the criminal law were to prohibit all sexual intercourse between unmarried people, most people would view the law as discrepant from their own personal moral views about sexual intercourse; as a result, they would disobey the law. Further, such a law might have an even broader effect -- it might cause people to view the law generally in a different light -- as a set of irrelevant rules rather than a coherent expression of community values.<sup>37</sup>

Perceptions of injustice might vary by community, where legal rules that govern issues that are of particular importance within a particular community are subject to closer scrutiny. If a legal rule seems outrageously unjust to members of a community, this might cause a decline in the moral authority of the law in that community and not in other communities. Thus, a legal

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<sup>35</sup> But in the example of drunk driving, it also might be the case that law followed changes in social norms. See Dan Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. Chi. L. Rev. 607 (2000).

<sup>36</sup> Robinson & Darley, *supra* note 5.

<sup>37</sup> See Robinson & Darley, *supra* note 5. See also Cooter, *supra* note 8.

rule mandating English-Only might be perceived as unjust by Latino communities; a set of legal rules that mandate harsher prison sentences for cocaine in crack form than cocaine in powder form might be perceived as unjust by African-American communities; a legal rule prohibiting free downloading of music via the Internet might be perceived as unjust by communities of music fans; a legal rule prohibiting possession of firearms might be perceived as unjust by the entire citizenry in certain parts of the country.

When people decide to flout the law following perceived injustice, is this a conscious decision? The ways in which law and popular culture interact to produce heightened awareness of perceived legal injustice certainly suggest that decisions to flout are conscious ones. And the expressive function of law in shaping compliance decisions also suggests that people make decisions to comply with full awareness of the extent to which the law is a credible source of community values. However, the fact that people are often aware of sources of injustice does not necessarily mean that they are aware of the ways perceived injustice permeates their behavior. The general non-compliance that can result from the law failing to accurately reflect community values might well occur with little, if any, conscious awareness of this process on the part of citizens who flout the law. How is this possible? In the next section, I argue that the psychological mechanisms that govern the connection between perceived injustice and flouting operate, at least in part, on a level beneath conscious awareness.

### *C. Psychological Mechanisms*

How is the connection between perceptions of justice and flouting behavior constructed psychologically? Do people use a conscious reasoning process by which they explicitly decide that because a law is unjust, they no longer respect the law generally, and for this reason they

will consciously flout it? There is evidence to suggest that the psychological processes responsible for the behavior described by Flouting Thesis may be subtle and beneath the level of conscious awareness. Such a process might operate as follows: When a person is confronted with a statute or jury verdict she perceives to be unjust, she draws a conclusion about the respectability or relevance of the legal system. This more general attitude is stored in memory and can later become activated automatically and incorporated into behavior, without the person even realizing that the general attitude is having an influence on her behavior. For example, a person learns of new legislation that would result in a (perceived) unfair distribution of the income tax burden. The person's perception that this new law is unjust might lead to a more general attitude (or stereotype) about her own duty to obey the law as a general matter (and not just regarding tax laws). According to the Flouting Thesis, there is a spreading effect that ensues: the general attitude that the law is irrelevant or unworthy of respect spreads from the specific instance of unfair income tax legislation to other areas of law, and eventually becomes incorporated into that person's behavior, without the person even being aware of it. The result is that, as an expressive instrument, law now serves as a less powerful guide for behavior for this person after learning of the unfair tax law.

Evidence for automatic, pre-conscious connections between attitudes and behavior is well established in the social cognition literature regarding stereotyping. Attitudes about stereotypic characteristics of groups of people can influence the way we behave, without our having any awareness of this influence, or even of the attitudes themselves. For example, Bargh, Chen, &

Burrows<sup>38</sup> administered a scrambled letter task that activated in experimental participants stereotypes about elderly persons. Some participants were given words to unscramble that were designed to activate (or prime) stereotypes about elderly people, such as “Florida” and “bingo.” Alternatively, participants in the control group were given any words to unscramble that were not elderly-related. After the participants were dismissed from the experiment, an observer measured how fast each person walked down a long hallway to exit the experiment.<sup>39</sup> People who were primed with elderly stereotypes in the scrambled letter task walked significantly more slowly when leaving the experiment than those in the control group. Thus, the act of unscrambling words relating to the elderly (such as “Florida” and “bingo”) automatically activated a more general elderly stereotype that includes other traits, such as slowness, frailness, and weakness.<sup>40</sup> Though participants were not aware of it, the activation of this elderly stereotype automatically activated behavior consistent with the stereotype. In short, thinking about old people caused the participants to unwittingly walk more slowly – a behavior consistent with a stereotype about the elderly.

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<sup>38</sup> John A. Bargh, et al., *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*. 71 *J. Pers. & Soc. Psych.* 230 (1996).

<sup>39</sup> The observer was another student who posed as a participant waiting to participate in an experiment. The observer was unaware of the types of words the participants had unscrambled, and was unaware of the hypotheses of the experiment.

<sup>40</sup> No words relating to slowness or weakness were themselves presented in the word unscrambling task.

In another demonstration of automatic activation of behavioral tendencies from attitudes, Chen & Bargh<sup>41</sup> used a 13 millisecond video clip to subliminally prime participants with pictures of faces. Some participants were presented with a Black face, while others were presented with a white face. But the clip was presented for such a short time period that participants were not even aware of seeing any face at all. The experimenters hypothesized that only those presented with the Black face would automatically activate stereotypes of African-Americans, which is precisely what happened. Amazingly, the activated stereotype manifested itself in prejudiced behavior. After receiving the subliminal prime, participants engaged in a word game with a partner.<sup>42</sup> Those primed with Black faces rated their partners in the word game as acting more hostile toward them, compared to participants who were primed with a white face. In addition, participants primed with the Black face were rated by a neutral observer<sup>43</sup> as acting more hostile toward their partner than those primed with the white face. Mere exposure to a stimulus evoking strong attitudes caused people to unwittingly behave in ways consistent with those attitudes.<sup>44</sup>

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<sup>41</sup> Mark Chen & John A. Bargh, *Nonconscious Behavioral Confirmation Processes: The Self-Fulfilling Consequences of Automatic Stereotype Activation*, 33 *J. of Experimental Social Psychology* 541 (1997).

<sup>42</sup> All participants (including the partners) were Caucasian.

<sup>43</sup> Ratings were made by coders who were blind to the experimental conditions and hypotheses.

<sup>44</sup> Similar results have been reported for priming aggression related concepts. One study reported that children who were primed with aggressive ideas (via reading a war comic book) were more likely to choose words with aggressive meanings when doing a subsequent sentence completion tasks compared to children primed with neutral ideas (via reading a neutral comic book). Leonard Berkowitz, *Words and Symbols and Stimuli to Aggressive Responses*, in J. Knutson (Ed.), *Control of Aggression: Implications From Basic Research* at 113-143 (1973). In another study, people who watched a film depicting a hostile interaction between a boss and a secretary subsequently rated an ambiguous target person as more hostile. Charles S. Carver, et al, *Modeling: An Analysis in Terms of Category Accessibility*, 19 *J. of Experimental Social Psychology* 403 (1983). And people who listened to hostile humor in a comic routine subsequently rated a job applicant more harshly than people who heard a non-hostile comic routine. Leonard Berkowitz, *Aggressive Humor as a Stimulus to Aggressive Responses*, 16 *J. Pers. & Soc. Psychol.* 710 (1970).

These findings also extend to behavioral performance on tests. Participants who were primed with a professor stereotype did better in Trivial Pursuit than those primed with a secretary stereotype, who in turn performed better than those primed with a soccer hooligan stereotype. A. Dijksterhuis & A. van Knippenberg, *The*

The fact that attitudes can automatically influence behavior without the actor knowing it has key implications for compliance with the law. For example, Linda Krieger<sup>45</sup> has discussed how federal civil rights laws governing employment discrimination fail to take into account the pre-conscious nature of automatic categorization-based judgments that result in disparate treatment but are not characterized by conscious discrimination. Specifically, some employers who engage in discriminatory behavior do so because their decisions are influenced by social categorization based on stereotypes, just as the participants in the priming experiments just described behaved consistently with their stereotype-driven attitudes. But because humans often do not have conscious access to the attitudes that drive their behaviors,<sup>46</sup> they honestly believe that their behavior was not discriminatory, but instead was motivated by some other reason.

Similarly here, the reported experiment testing the Flouting Thesis demonstrated that when people notice a law they perceive to be unjust, this perception can diminish their general willingness to comply with the law. Were people aware of this connection? Evidence from the stereotyping literature described above suggests that people whose compliance behavior is influenced by their own attitudes are unaware of this connection. Indeed, evidence from the experiment itself also suggests that participants were unaware that their attitudes about the perceived unjust laws had any affect on their willingness to comply. Recall that participants answered an Exit Questionnaire in which they were asked whether their exposure to the newspaper stories could have affected their Willingness to Comply judgments. Ninety-eight

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Relation Between Perception and Behavior or How to Win a Game of Trivial Pursuit, 74 *J. Pers. & Soc. Psychol.* 865 (1998).

<sup>45</sup> Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 *Stan. L. Rev.* 1161 (1995).

percent of the participants answered “No”. The two people who thought their responses might have been affected were nonetheless unaware of the specific influence on their judgment of the perceived injustice of the laws described in the newspaper stories.<sup>47</sup>

Perception of an unjust law apparently activated a more general attitude about the unjustness of the legal system, yet this process remained beneath the level of conscious awareness. In Chen & Bargh’s study, presentation of an African-American face activated a general stereotype, which people to both exhibit and perceive more hostile behavior, compared to participants primed with white face. Similarly here, presentation of specific instances of perceived unjust laws activates a broader stereotype – one in which laws are typically not worthy of respect – and that stereotype automatically activated flouting behavior. Just as priming African-American stereotypes causes people to exhibit and perceive hostility, priming stereotypes about the perceived injustice of law causes people to express more willingness to generally flout the law than those not primed with injustice.<sup>48</sup> And just as the participants in the stereotyping study were unaware that they even had stereotyped attitudes (for example, that

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<sup>46</sup> See Richard E. Nisbett & Timothy D. Wilson, *Telling More Than We Can Know: Verbal Reports on Mental Processes*, 84 *Psychological Rev.* 231 (1977).

<sup>47</sup> The two respondents who answered affirmatively indicated only that their participation in the first study made them tired and impatient, so that they responded very quickly in the second study. There was no indication from these two respondents an awareness of a substantive influence of the first study on their responses in the second study.

<sup>48</sup> Note that the participants in the Bargh, et al. studies were unaware not only of the stereotypes that produced their behavior, but also were presumably unaware of performing the behavior itself (that is, they did not realize they were walking more slowly or acting in a more hostile manner than their non-primed counterparts). By contrast, participants in the present study presumably knew that they were expressing willingness to break laws when they estimated the likelihood they would exceed the speed limit, drive drunk, and so on. The questionnaire format used in the present experiment thus represents a strong test of the Flouting Thesis – if participants were willing to admit to willingness to flout the law in the laboratory in full awareness of their own flouting, then they might be even more willing to flout the law when such flouting typically manifests itself through automatic processes, such as driving faster than the speed limit without really thinking about it or making a conscious decision to do so. The results of the present experiment, therefore, might underestimate the strength of the flouting effect.

Blacks are more likely to be hostile), the participants in the current experiment were unaware that their attitude about respect for the law generally had been altered by the perceived injustice introduced by the newspaper stories.

It is also important to note here that the spreading effect of the prime moves from the level of a general attitude and manifests in a specific behavior. Participants in the elderly stereotype study had a general elderly stereotype activated (by seeing the words “Florida”, “Bingo” and the like). The effect of this general attitude activation was to prompt specific behaviors (walking slowly) that on their face were completely unrelated to the word task. Participants in the racial stereotype study engaged in behaviors (exhibiting and perceiving hostility) that appeared to be completely unrelated to seeing a short video clip of someone’s face. Similarly, in the current study, participants expressed willingness to engage in behaviors (violating specific criminal laws regarding traffic violations, larceny, and software copyright) that on their face were completely unrelated to the topics of the newspaper stories (landlords, forfeiture, and taxes).<sup>49</sup>

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<sup>49</sup> Note that the only criminal violation in the present experiment that did not exhibit the expected trend was failure to pay income taxes. Interestingly, this was the only item in the Criminal Behavior Index that **was** in fact related to the newspaper story primes. Given the findings of earlier research that moral commitment to a particular law predicts self-reported compliance with that law (see, for example, Silberman, *supra* note 7; Grasmick & Green, *supra* note 7), one might have expected the perceived unjust tax newspaper story to have invoked the strongest non-compliance in willingness to flout tax laws. Ironically, it may have been the very similarity between the prime (specifically, the newspaper story about income tax) and the tax compliance measure that accounted for the anomalous results for the tax compliance measure. Specifically, prior research on priming demonstrates that primes tend to be assimilated into later judgments only when the decision maker is unaware of the influence of the prime, such as when the prime is seemingly unrelated to the judgment or behavior in question. However, when a decision maker is aware of the priming episode at the time she make her judgment, a contrast effect can occur, so that in an attempt to “compensate,” the decision maker uses the information activated by the prime to arrive at a judgment that is opposite of the predicted direction. See, for example, Fritz Strack, et al., Awareness of the Influence as a Determinant of Assimilation Versus Contrast, 23 *European J. of Soc. Psychol.* 53 (1993). Thus, awareness of the similarity of the news story about income tax and the subsequent question about tax compliance might have caused participants to deflate their predictions about their own future non-compliance with income tax laws. Finally, it should be noted that participants were college students who likely had little or no experience in filing income tax returns.

Given that the processes involved in flouting under these circumstances are, at least in part, unconscious, opportunities for avoiding undesirable effects of perceived injustice are limited. In the section below I outline areas of most likely opportunity.

#### *D. Implications*

Recognition of initial sources of perceived injustice is the first step to controlling the general non-compliance it triggers. The sources of perceived injustice I have discussed in this paper generally fall into two categories: perceived unjust jury verdicts, and perceived unjust legislation. The problem of perceptions of unjust jury verdicts is perhaps the more difficult problem from a policy perspective. First, criminal jury verdicts that are perceived to be unjust oftentimes are in fact unjust from a narrow distributive justice perspective: factually guilty people are sometimes acquitted by juries, and as a result, people who have in fact committed a criminal act sometimes do not receive their just desert. Likewise, factually innocent people are sometimes convicted by juries. Of course, acquittals represent a judgment on the part of the jury (or judge) that the prosecution has not met its burden of proof, and so from a procedural justice perspective many acquittals that appear unjust from a narrow distributive justice perspective, are morally defensible when procedural justice considerations are taken into account. But many people find it difficult to give proper weight to procedural justice considerations once they have made an assessment about the justness of the outcome from a distributive perspective. Thus, from the point of view of a person who believed that O.J. Simpson did in fact kill two people without justification or excuse, the prospect that the jury held reasonable doubts that the prosecution proved every element of each crime provides little solace – the distributive justice worry overwhelms procedural justice concerns in this context. In sum, because information

about jury verdicts can, and should, be available to the public, perceived unjust jury verdicts are bound to occur, and to cause general non-compliance in the ways outlined in this article.<sup>50</sup>

A second type of source of perceived legal injustice is legislation. Perhaps the most salient historical example is the prohibition on manufacture, distribution and sale of alcoholic beverages imposed by the Eighteenth Amendment. During the period when the Eighteenth Amendment was in force, the law prohibiting alcohol notoriously disobeyed. Toward the end of the prohibition era, prominent leaders worried that such widespread lawlessness had weakened respect for the law generally, leading to widespread non-compliance with laws unrelated to prohibition.<sup>51</sup> Contemporary examples are not always associated with the same extent of widespread disobedience, but provoke controversy and heated discussion nonetheless. These include particular aspects of drug laws (such as the crack/powder cocaine sentence disparity implicit in the Federal Sentencing Guidelines), sodomy statutes, foster care regulations, and smoking ordinances, to name just a few.

Laws that are enacted with the intention to change social norms and behavior sometimes meet with resistance if the law departs too substantially from the view of a typical juror, judge, prosecutor, or police officer.<sup>52</sup> Outside of the courtroom, many discrepancies between laws and attitudes represent avoidable sources of crime, because perceptions of injustice and the

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<sup>50</sup> It is possible that televising criminal trials may exacerbate feelings of perceived injustice regarding verdicts in notorious cases. The considerations weighing in favor of and against the televising of criminal trials are numerous and extend beyond the scope of this Article. See, Ruth Ann Strickland & Richter H. Moore, Jr., *Cameras in State Courts: A Historical Perspective*, 78 *Judicature* 128, 135 (1994); Kelly L. Cripe, *Comment: Empowering the Audience: Television's Role in the Diminishing Respect for the American Judicial System*, 6 *UCLA Ent. L. Rev.* 235 (1999); David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 *Ariz. L. Rev.* 785 (1993).

<sup>51</sup> See Harry G. Levine, *The Birth of American Alcohol Control: Prohibition, the Power Elite and the Problem of Lawlessness*. 1985 *Contemporary Drug Problems* 63 (1985); David E. Kyvig, *Repealing National Prohibition* (1979).

diminished respect for the legal system that follows can potentially destabilize the law-abiding behavior of ordinary people. By limiting the distance between the severity of condemnation contained in the law and the severity of condemnation implicit in public attitudes, perceived injustice can be diminished.

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<sup>52</sup> Dan Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 U. Chi. L. Rev. 607 (2000).