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The Work of Legitimacy

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Abstract

What makes a law or regulation legitimate? This article develops a sociological approach that locates legitimacy not outside the law but in the work performed by a network of actors that cuts across the boundaries of the state. Drawing on Weber, Habermas, and Szelenyi, we suggest that legitimacy should be understood as the element that increases the probability of compliance with legal commands. We argue that this element cannot be a psychological "belief in legitimacy" but should be understood as work performed by the staff to construct and repair the discursive mechanisms that make legal commands defensible. We then draw on Actor-Network Theory to analyze this work as translation and offer two empirical examples: labor legislation in China and vaccine mandates in the United States. Throughout, we compare our approach with different lines of research in the law and society literature, noting where our conclusions converge and where they represent potential revisions to this literature.

INTRODUCTION

What makes a law or regulation legitimate? How is compliance with new legislation or regulation achieved? In a sense, the point of this intervention is to argue that these two seemingly different questions—one about legitimacy and the other about compliance—are in fact one and the same question, and that the sociological theory of legitimacy should be a theory of the mechanisms that increase the probability of compliance with laws, regulations, orders, and commands.

All too often, have sociologists sidestepped the question of legal legitimacy by treating it as deriving from some source outside the law, whether political culture or the "shared beliefs of. . .some social group" (Suchman 1995). This paper, in contrast, draws on Weber, Habermas, Szelenyi, and Actor-Network Theory (ANT) to develop a sociological approach that treats legitimacy as the product of work performed by a network of actors that cuts across the boundaries of the state. From Weber (1978), we take the initial formulation of legitimacy as the element that increases the probability of compliance with legal commands. We then draw on Habermas (1975) and Szelenyi (2016) to replace Weber's "belief in legitimacy" with the concept of "work of legitimacy" performed by the staff (this category is explained later) to construct and repair the discursive mechanisms that make legal commands defensible, and thus increase the likelihood of compliance. We draw on ANT (Callon 1984) to analyze the work of legitimacy as translation and offer two empirical examples—labor legislation in China and vaccine mandates in the United States—to demonstrate the utility of this approach. Throughout, we compare our approach with different lines of research in the law and society literature, noting where our conclusions converge and where they represent potential revisions to this literature.

LEGITIMACY IN WEBER'S SOCIOLOGY OF DOMINATION

The inspiration for this intervention is Weber's theory of domination. Weber, who was trained as a legal scholar, developed one of the earliest and most influential treatments of legitimacy as a sociological question. His discussion, however, was shot through with certain tensions and apparent inconsistencies that later theorists sought to overcome. It is therefore a good starting point for a critical reconstruction of the sociological theory of legitimacy.

The concept of legitimacy appears in Weber (1978, pp. 212–14) when he tries to answer the question: Why do people follow orders? According to Weber, domination (*herrschaft*) is a subspecies of power (*macht*) that operates by issuing commands and therefore involves at least a "minimum of voluntary compliance, that is, an interest. . .in obedience." Habituation, fear, or rational calculation can explain some cases of compliance but does not provide "a sufficiently reliable basis" for domination, understood simply as "the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue" (Weber 1978, p. 214). The missing ingredient needed to achieve stable domination, according to Weber, is "the belief in legitimacy." It would appear, therefore, that there are two different questions: One is about compliance, for which legitimacy is part of the answer. The other is what makes a command legitimate, for which the answer seems to reside in some belief held by those who obey it. Yet, in typical Weberian fashion, immediately after proposing this solution, Weber offers multiple caveats. He says that

> it is by no means true that every case of submissiveness to persons in positions of power is primarily (or even at all) oriented to this belief [in legitimacy]. Loyalty may be hypocritically simulated. . .on purely opportunistic grounds, or. . .reasons of material self-interest. Or people may submit from individual weakness and helplessness because there is no acceptable alternative. (Weber 1978, p. 214)

What he gives with one hand, he takes with the other. Compliance and belief in legitimacy are decoupled because the content of people's minds is hard to determine and belief is fickle.

This equivocation, planted at the concept's very inception, should have alerted scholars that psychological belief is a very flimsy basis on which to build a theory of legitimacy. Yet, at least one line of research in the law and society literature continues to understand legitimacy as a "psychological property of an authority, institution, or social arrangement that leads those connected to it to believe that it is appropriate, proper, and just" (Tyler 2006, p. 375). According to Tyler, people find an authority or social arrangement legitimate because they experience it as fair.[1] This seems to us tautological: A system of rule is legitimate if people believe that it is fair, i.e., legitimate.[2] Do all of them need to believe this? Always? This would seem far too high a bar. How many, then, and how often? But if this is the case, how do we know whether in a particular instance they obey because they think the system is fair or for some other reason? Paraphrasing the earlier quote from Weber, an individual may obey a command at T_1 because she believes in its legitimacy. Yet, the same individual may "hypocritically simulate" loyalty at T_2 but obey due to other reasons. Then at T_3, she may disobey because these other reasons are unreliable. What guarantees that the belief in legitimacy, and with it the stability of a system of domination, persists over time? The explanations provided by this approach—political culture, ideologies, myths, and rituals (Tyler 2006, pp. 378, 391)—are no explanations at all. Remember, it was the belief in legitimacy that was supposed to provide stability, but now the stability of belief itself is attributed to some other huge abstraction like political culture.

HABERMAS'S CRITIQUE OF WEBER'S APPROACH TO LEGITIMACY

Precisely for these reasons, Habermas (1975, p. 97) argued that the phrase "belief in legitimacy" cannot be interpreted as indicating a purely empirical, psychological state (about which you can ask people in surveys). Interpreted in this way, it cannot explain the stability of a system of domination. At any time, any skilled orator could come along and persuade people to believe otherwise. Habermas noted that immediately after listing his caveats, Weber (1978, p. 214) countered them by saying that "these considerations are not decisive for the classification of types of domination. What is important is the fact that in a given case the particular claim to legitimacy is to a significant degree and according to its type treated as 'valid.'" Everything depends, therefore, on what is meant by "valid." Clearly breaking with Weber, Habermas (1975, p. 97) interpreted the reference to validity to mean that "every effective belief in legitimacy is assumed to have an immanent relationship to truth, the grounds on which it is explicitly based contain a rational validity claim that can be tested and criticized independently of the psychological effect of these grounds." Habermas (1975, p. 100) acknowledges that this interpretation could never have been Weber's intention, given his "view of the rationally irresoluble pluralism of competing value systems and beliefs," but is unbothered because in his view, "the relation to truth of belief in legitimacy" is a problem that "cannot be resolved by sociological means" (p. 101). Sociologists, hands off legitimacy! Law and society scholars, for example, may point out that the language of

[1]But what kind of fairness? Tyler focuses on procedural fairness (Tyler 2003, 2006; Tyler & Huo 2002), but other aspects of fairness, such as distributive fairness and the fairness of interpersonal treatment, are also considered important, especially in the literature on organizations (Ambrose 2002, Ambrose & Arnaud 2005, Colquitt 2001). Increasingly, researchers are skeptical about these distinctions because different aspects of fairness are highly correlated with one another (Ambrose & Arnaud 2005, Colquitt 2001). They propose to measure instead overall fairness, as in, "Overall, I'm treated fairly by my organization" (Ambrose & Schminke 2009, Nauman et al. 2020). This underscores our point below about tautology.

[2]Indeed, as Tost observed, the psychological literature remains divided on whether fairness serves as a precursor to legitimacy or an outcome of it, or if legitimacy itself is merely the perception of fairness (Tost 2011; see also Hegtvedt & Johnson 2000, Major & Schmader 2001, Tyler 2006).

the law is inevitably indeterminate, and that there is always a gap between "law on the books" and "law in action" (Silbey 2005, p. 360). However, Habermas would argue that even in these cases, the relationship to truth is a regulative ideal immanent in the structure of communicative action, and with this we have indeed passed outside the realm of sociology.

Is this a sociological dead end? Can law and society scholarship build on Habermas's devastating critique of the idea of "belief in legitimacy," without throwing the sociological baby out with the psychological bathwater? We think it can. What we take from Habermas is the astute point that for belief in legitimacy to anchor the stability of a system of domination, it must be able to withstand tests, criticisms, and counterarguments. "Valid," after all, derives from the Latin verb *valere*, "to be strong." The claim to legitimacy is strong if and when it can be "tested and criticized" and yet remain standing—if it is, in other words, "defensible," an ambiguous term relying on the metaphor "argument is war" (Lakoff & Johnson 1980) to signify a relationship to both power and truth. This seems likely closer to Weber's original meaning. Valid means that "the persons claiming authority" could withstand counterclaims and produce evidence that they are the rightful occupants of this position, or that they could defend "the choice of means" by which they exercise this authority as in accordance with tradition or rationality (Weber 1978, p. 214). This means focusing analysis not on "belief" but on actual discourse, as Foucault (1972) and Latour (1987) use the term. Legitimacy consists of actually observable and institutionalized discursive features of the system of domination. These surround commands with a system of defenses. When Weber wrote in a letter to Hans Ehrenberg that "as far as I am concerned, forms of government are techniques, like any kind of machinery" (quoted in Mommsen 1984, p. 396), perhaps he had something similar in mind.

SZELENYI'S DISTINCTION BETWEEN THE STAFF'S AND THE MASSES' BELIEF IN LEGITIMACY

And what to make of Weber's "to a significant degree"? How to operationalize this statement? There is no indication in Weber's text of a particular quantitative threshold, nor would it make sense to seek one. Szelenyi (2016, pp. 3–4) suggested that Weber's equivocal treatment of the content of "belief in legitimacy" can be resolved by means of a distinction between the masses and the staff. What the staff believes, and what motivates them to obey their superiors, "largely determines the type of domination" (Weber 1978, p. 213). The masses, on the other hand, often obey simply because of "helplessness" and the sense that "there is no acceptable alternative" (p. 214). "To a significant degree," therefore, is not about aggregating individual beliefs and finding that 58% or some other number believe that the system is fair. It is about the quality of mediation by the staff. When they convey commands and enforce compliance, do they do so for ulterior motives or because they truly believe in the validity of the claim to authority by their superiors, the appropriateness of the means chosen, the fairness of the procedures?

Szelenyi is probably right that this was Weber's intention. In a letter to Roberto Michels, Weber wrote that "such notions as 'the will of the people'. . .ceased to exist for me years ago; they are fictions" (quoted in Mommsen 1984, p. 395). His historical sociology of domination focused mostly on the relations between the rulers and the staff (Weber 1978, pp. 231–37, 249–62). In later scholarship, the label of "neo-Weberian" was often attached to sociologists, like Skocpol (1979, pp. 16, 32), who cautioned against the idea that "social order" rests "upon a consensus of the majority." Instead "what matters most is always the support or acquiescence not of the popular majority of society but of the politically powerful and mobilized groups, invariably including the regime's own cadres" (p. 32).

THE WORK OF LEGITIMACY

We intend to preserve this focus on the staff, but remove certain empirical and conceptual limitations of Weber's and Szelenyi's approaches. We postpone discussion of the empirical limitation of this approach—who are the staff?—for later in this article and begin with a conceptual difficulty: Can the staff's "belief in legitimacy" be treated as independent from the work of transmitting commands top-down and ensuring compliance? This would make sense if the language of commands and what it meant to comply with them were crystal clear and unequivocal. But we know from the literature on legal consciousness that the ambiguity of legal language is a pervasive feature (Silbey 2005). Legal language, the language of statutes, regulations, and orders, inevitably underdetermines what it means to comply with the law. There is always a gap that needs to be filled between legal language and what it means to comply with it (Silbey 2005, p. 360). This gap is not closed by, for example, clarifying the language of rules, adding yet more rules, or requiring people to follow the strict language of rules. Paradoxically, such measures are likely to achieve the opposite. Following the strict language of rules leads to anomie (Garfinkel 1967, pp. 18–24). Adding more rules or making them more detailed will increase, rather than decrease, the discretion of lower-level officials because inevitably rules will contradict one another, or because due to limitations of time and resources enforcement must become selective (as when police officers choose which car to stop, or federal civil rights compliance officers pick which case to pursue) (Lipsky 1980, p. 14).

We have arrived at a difficulty that should be familiar to law and society scholars. The law and society literature is often torn between studies of the gap between law on the books and law in action and constitutive approaches that focus on the production of social life by law and legality. How could legal language underdetermine yet constitute spheres of social action?[3] The answer has to do with the mediating role of the staff, provided that we replace "belief" with the concept of the "work of legitimacy." In the "belief in legitimacy" view, the staff transmits commands and ensures compliance because it believes in the legitimacy of the principles underlying the position of those issuing the commands, the means chosen, etc. The legal principles "on the books" exist as a separate force of law outside of the daily operations of society. But if the gap between legal language and what it means to comply with it is pervasive and inevitable, this means that the staff constructs the legitimacy of rules and commands in and through the work of conveying to citizens their legal duties, clarifying ambiguities, issuing additional regulations, creating forms that spell out how to comply, granting exemptions, exercising discretion, and reporting back up. The imagery is not of a prior belief in the legitimacy of a set of rules exogenous to the operation of "society" guiding action (and perhaps sometimes clashing with realities on the ground), but of a search in the details of concrete situations as to what compliance should mean, and the construction of tests that certify whether it took place or not.[4] Instead of belief in legitimacy, we propose that the extra ingredient anchoring the stability of a system of rule is the work of legitimacy performed by the staff. The gap between law on the books and compliance is filled not by more rules but by honed practice, expertise, and tacit knowledge (Dreyfus & Dreyfus 2005) acquired through doing the work of legitimacy, the work of constructing and repairing (constantly) the defenses that make laws, regulations, and commands valid. It is through the mediation of the work of legitimacy performed by the staff that legal language can be simultaneously underdetermining and constitutive.

[3]We thank an anonymous reviewer from the *Annual Review of Law and Social Science* for this point.

[4]The legitimacy of law is threatened when no such test can be constructed and agreed upon—witness the recent impasse as to whether the Trump administration did or did not comply with the Supreme Court's order to "facilitate" the return of Kilmar Abrego Garcia.

COMPARISON TO NEO-INSTITUTIONALISM

Focusing on the mediating work performed by the staff is of course not altogether novel. It is similar to another line of research in the law and society literature, namely, neo-institutionalist analyses of the implementation of Equal Employment Opportunity and Affirmative Action (EEO/AA) legislation (Dobbin 2009; Edelman 1992, 2016; Sutton et al. 1994). This line argues that the ambiguity of EEO/AA legislation and the relatively fragmented and weak regulation by the American state have led organizations, and especially human resources (HR) managers and experts, to fill in the gap by instituting structures and procedures (e.g., grievance procedures) that spell out what it means to comply with the law (Edelman 1992, pp. 1532–34). The result is a form of symbolic compliance that reflects managerial priorities and is decoupled from the original intent of the legislation, namely, reducing employment discrimination (Edelman 2016, p. 155). The new structures and procedures represent a "legalization of the workplace" (Sutton et al. 1994) and a "managerialization of law" (Edelman et al. 2001). Both expressions capture the idea that the gap between legal language and compliance is filled by a hybrid legal–managerial discourse that surrounds organizational decisions with a set of defenses legitimating symbolic compliance as actual compliance (Edelman 2016, p. 155). We find these analyses convincing and, more importantly, instructive as to what the work of legitimacy entails and who performs it. At the same time, however, two features of the neo-institutionalist approach prevent it from fully developing an analysis of the work of legitimacy.

First, the neo-institutionalist literature limits itself to the American context. It derives its accounts of symbolic compliance from the specific context of the American "delegated state" (Campbell & Morgan 2011), and the particularly ambiguous and broad nature of EEO/AA legislation (Edelman 1992, p. 1532). This makes it seem as if the work performed by organizational staff to secure compliance with the law is relevant only under these conditions, when the language is particularly ambiguous, the state is decentralized, and supervision is lax. This is not the case. Below, we briefly present our research on the implementation of the new labor law in China, an authoritarian state of ample resources and centralized authority (Z. Fu & G. Eyal, manuscript in preparation). This case demonstrates that the concept of the work of legitimacy has a much broader purchase.

Second, neo-institutionalist theory is limited by the concept of symbolic compliance. It seems to imply that the mediating work of the staff is significant only when compliance is not genuine but "symbolic" (Edelman 1992, pp. 1532–34; Edelman 2016, pp. 31–33, pp. 108–12), "vulnerable to the logic of loose coupling" (Sutton et al. 1994, p. 966). The argument seems to be that without legal authorities spelling out and supervising the meaning of compliance, it becomes hostage to the self-interests of the actors and organizations involved, and thus more performative than genuine. Thus, Edelman (1992, p. 1542) characterizes EEO/AA organizational procedures as merely "symbolic gestures to public opinion." The implication of calling something symbolic is to contrast it with some other form of compliance that is presumably not symbolic because it is identical to the law's intention. We have already indicated that this is, in fact, impossible. It is also asymmetric. In one case, the sociologist presents organizations and experts as free to pursue their collective and individual self-interests by merely "mimic[ing] public law enforcement" and by "symboliz[ing] attention to law" (Edelman 2016, pp. 24–25). In another case, the sociologist presents the actors as bound by the language of the law so that they must substitute the legislator's intention for their own interests.

There are ways out of the embarrassment presented by this asymmetry, but we think that the price paid is too high. Symbolic compliance works, according to neo-institutionalists, because it resonates with the audience. What they give with one hand—attending to the work of legitimacy performed by the staff—neo-institutionalists take with the other, because it now appears that the

locus of legitimacy is not in this work at all but in some putative consensus among the audience. They define legitimacy as "congruence" between the actions of an entity and "the shared beliefs. . .of some social group," leading to a "generalized perception" that these actions "are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions" (Suchman 1995, p. 574). They say that the "public legal order already enjoys legitimacy" (Edelman 2016, p. 24), by which they mean that the institution of the law enjoys general cultural approval and the public believes in the rationality and fairness of things like due process or equality before the law.[5] Symbolic compliance simply borrows this legitimacy by mimicking the forms of due process, loosely coupled from its content. This argument is a Trojan horse because it is hard to limit its application. How would one know whether compliance is merely mimicking or genuinely following the law? Because the language of the law is indeterminate, any form of compliance is vulnerable to the accusation that it is mere mimicry. Is it not precisely the work of the staff to frame tests of compliance and defend it as genuine? We think, therefore, that the qualifier "symbolic" is ultimately empty, its main function being to substitute the sociologist's judgment for the judgment and work of the actors regarding what constitutes compliance.

A neo-institutionalist could double down on the symbolic and argue, as Suchman (1995, p. 576) does, that "in this tradition, institutionalization and legitimacy are virtually synonymous." Institutionalization wraps the forms of legality with a taken-for-granted air immediately recognized as legitimate by individuals socialized by these institutions. This means that compliance with laws and commands is to be explained by their resonance not with some set of beliefs but with internalized predispositions and habits. Bourdieu (2000, pp. 168–69) makes the strongest version of this argument, citing Pascal approvingly: "Custom makes all authority." The idea is that legitimacy works "most of the time" through embodied recognition:

> The authority that the state is able to exercise. . .results for the most part from the docile dispositions that it inculcates through the very order that it establishes. . . A command. . .can rely on what Pascal called "the automaton" within us, in other words dispositions prepared to recognize it practically.

This is no doubt often true. Stepping into a court of law, we respond automatically to the august apparel in which the law is enclothed. We whisper, move slowly, take our seats reverentially. All compliance, therefore, is symbolic. Building the procedural edifice of EEO/AA compliance inside an organization shows, indeed, the relevance of habitus. Actors are applying predispositions acquired in one setting to another setting, building something that looks like procedural legal rationality. But even Bourdieu (2000, pp. 104–5) recognizes that this is not simple mimicry but a necessary "labor of legitimation." When transposing from one setting to another, inevitably there are gaps to be filled, incongruencies to be smoothed over, other actors to coach and persuade. In short, there is a need for, e.g., expertise, practical judgment, and discretion.[6]

[5]What if there is no consensus among the audience? What if some believe that fairness in the workplace implies inclusiveness, but others do not? Schoon (2022, p. 486) suggests that sociologists define audiences by "the presence of shared expectations." Whenever there is divergence of opinions regarding the object of legitimacy in a given audience, the sociologist should separate it into distinct audiences. A law is legitimate for audience A, but not for audience B, etc. This is no longer a theory of legitimacy but of something that could be called cultural approval or something similar. The main reason Weber introduced the concept of legitimacy was to capture the extra ingredient that explains why most commands or laws are obeyed most of the time by most people across different "audiences." Telling us that there are *n* audiences with *n* relationships to the object of legitimacy gets us no closer to what needs to be explained, namely, generalized compliance with the legal order.

[6]Moreover, Bourdieu's theory of legitimacy begs the question of incompliance. If the law enjoys legitimacy by means of a semiautomatic correspondence between engrained dispositions and the symbolic forms of the law,

EXAMPLE OF THE CHINESE LABOR LAW

On January 1, 2008, a new labor contract law took effect in China, intended to protect the legal rights of workers. Ten years later, one of the authors observed how the law was being implemented in the Waterfront District of Development City, an economically vibrant municipality of the Pearl River Delta located in Guangdong province. Formally, the law was to be administered by the Ministry of Human Resources and Social Security (MHRSS), but in the Waterfront District, the main actor in the law's implementation was a social organization, the Waterfront District Harmonious Industrial Relations Promotion Association (HIRPA). It was created by an alliance between local labor officials, retired officials then working as private consultants, and labor lawyers. HIRPA organized trainings for HR managers, small business owners, and union officials in how to comply with the new legislation. HIRPA also trained a new category of employment relations coordinators, firm employees whose job would be to assist in creating the right procedures to handle employment matters, act as mediators, and interpret the law for management and employees alike. In short, the gap between the language of the law and the workaday realities of workplace compliance was mediated by the work and expertise of these actors, trainers, and trainees (Z. Fu & G. Eyal, manuscript in preparation).

Let us underline the significance of this example. First, even in an authoritarian state like China, the language of the law and supervision by MHRSS did not suffice to produce compliance. The work of HIRPA officials and their trainees was necessary to mediate between the language of the law and workplace realities, to establish a standard for what it meant to comply with the law. Observing these dynamics in the very different context of an authoritarian Chinese state shows—against the neo-institutionalist analysis—that they are not a function of the weakness of the American state or the particularly ambiguous language of EEO/AA law. EEO/AA legislation is perhaps somewhat more ambiguously written and weakly enforced, but the gap between the law on the books and law in practice always needs to be bridged, always entails work by officials, experts, and "street-level bureaucrats" (Lipsky 1980, Silbey 2005). Second, in the context of an authoritarian state, it is hard to claim that the legitimacy of the new labor law, with its emphasis on due process and procedural fairness, derived from some preexisting consensus (or embodied predispositions) about a public legal order that is not a popular frame in the public discourse. Rather, the belief—of HIRPA trainers, of their trainees, and ultimately of managers and workers—in the legitimacy of the law was produced in and through the work that showed how to comply with it, and how the law encompassed and coordinated the interests and identities of the different parties to the employment relationship. Thus, mediation by the work of legitimacy is a general feature of domination, and of the exercise of power by means of laws, regulations, commands, and orders, and it requires a set of concepts adequate for the analysis of this work.

ACTOR-NETWORK THEORY: THE WORK OF LEGITIMACY AS TRANSLATION

ANT offers a set of concepts useful for analyzing this mediating work of legitimacy. The link is not as far-fetched as it may seem at first blush. We want to know how a law becomes legitimate so that

how do we explain instances when this correspondence fails, laws are resisted, and commands are not followed? The typical Bourdieusian explanation is in terms of hysteresis—a lack of correspondence between the habitus and changed forms, or between the habitus of new actors and the old forms, etc. (Bourdieu 1988, Strand & Lizardo 2017). Yet, in a modern, dynamic, diverse society, would we not expect some degree of hysteresis to be the norm rather than the exception (Lahire 2011)? This is especially relevant for the approach developed here because—as we discuss shortly—many of the actors participating in the work of legitimacy straddle the boundary of the legal field and lack a habitus adjusted in advance to the symbolic forms of the law.

people obey it. ANT asks how scientists "impose themselves and their definition of the situation on others" (Callon 1984, p. 196). In both cases, the goal is to make others follow a certain course of action through a mixture of persuasion, cajoling, and structuring of the field of actions open to them. This is exactly what the "sociology of translation" (Callon 1984) sets out to do.

More importantly, ANT's demand for radical symmetry similarly focuses attention on the work of mediation. One could rephrase this demand for symmetry as follows: Is it not asymmetrical to deny law on the books the power to spell out compliance, because language is indeterminate, while granting the very same agency to the law in action? Or more precisely, why would law and society scholars question how one group of scientists—legal scholars—assign this agency in the stories they tell but accept the stories of another group of scientists—sociologists—in which the power to close legal controversies and say what compliance entails is given to social forces, social groups, or society? The alternative is a symmetrical approach in which law is a "*hybrid*" or a "network of people and things" (and documents and words) (Latour 2010; Levi & Valverde 2008, pp. 806, 814, emphasis is original). Radical symmetry requires that we treat both law and society not as givens but as precisely what gets assembled and stabilized by the work that takes place between them, so to speak. This work links together people and words, documents and organizations, identities and actions. In ANT, this work is called translation.

Translation is a concept meant to capture how actors and their interests get "defined, associated and simultaneously obliged to remain faithful to their alliances," without at any point referring to an external, natural or social, necessity (Callon 1984, p. 224). Similarly, we think of legitimacy as the work of persuading others, constructing arrangements that corral them in a particular direction, and enticing them to align their interests and play the roles assigned to them within a certain interpretation of compliance. This work can be explained by neither social nor legal necessity. They are its outcome. If successful, translation ties together all relevant parties into a tight actor network, or as Weber would say, a piece of machinery, that works together.

To translate is to make two things equivalent that were not previously equivalent, bending one or both in a new direction. This speaks directly to the asymmetry we detected earlier in neo-institutionalist theory. In symbolic compliance, actors have leeway to follow their own self-interests while, as Weber wrote, "hypocritically simulating" compliance with the intention of the law. In genuine compliance, actors are bound by the language of the law to substitute the legislator's intention for their own interests. The analysis of translation transforms this from a theoretical opposition to a practical problem that actors negotiate, namely, how to make equivalent the language of the law and the interests of the actors. Callon (1984) broke down the process of translation into several "moments" that can be instructive for thinking about what the work of legitimacy entails.

Problematization

The first step in the process is to identify within a certain state of affairs a problem, a solution to which is of common interest to a certain set of actors. This involves defining who the relevant actors are and what their interests are or should be. The problem is constructed as an "obligatory point of passage" through which these actors must go to pursue their interests. In ANT, social actors are not pregiven but are formed and assigned roles in and through discursive processes. A sociologist may reject this as treating social reality as text, but at least for the case at hand, which deals with law, it is entirely realistic. Any legal document, after all, begins by naming, defining, and qualifying the relevant actors, some of whose all-too-human characteristics are thereby subtracted, while they may acquire new abilities to act. This approach is especially well-suited to probing what we describe below as empirical gradations and distinctions between the masses and the staff, without assuming in advance who is an agent of the state and who is not. For example,

in undertaking the work of legitimating the Chinese labor law, HIRPA sought to persuade all the relevant actors—e.g., employers, workers, labor officials, arbitrators, labor lawyers—that disharmony in labor relations constituted a problem for all of them, and that their interests—employers' interest in avoiding labor conflict, workers' interest in legal protection, individual officials' interest in career opportunities, labor lawyers' interest in expanding the market for their services—could be advanced by transforming employment relations into a public service provided by the social organization. The legal and administrative expertise of providing this public service became the obligatory point of passage through which all parties must pass if they are to accomplish their goals.

Interessement

If the relevant parties are to play the roles assigned to them in the problematization, their ties to other problematizations by other actors first must be cut off. Callon (1984) talks about this as interessement, a double entendre that means both interposing and soliciting. For Chinese small employers to construe their interests as aligned with the labor law, labor officials together with HIRPA had to detach them from their prior identities as bosses, who punish and reward based on a domestic moral economy of loyalty. This was done by transforming the focus of labor governance from coercive inspection to a preemptive service that provides training for employers on the new labor law. Especially effective was the dramatic device of a mobile arbitration court that managers and small employers were required to attend, where they witnessed the risks of adhering to outdated identities and practices. In this approach, the habitus, the embodied predispositions of the relevant actors, is present as a practical problem. The work of translation seeks to exploit the little gaps caused by hysteresis (see footnote 6) so as to divert actors in a new direction. Lest this account appear to give too much autonomy to a strategic actor who is translating everybody else, we emphasize that the interests of the translator also get translated in and through the work of legitimacy. The leader of HIRPA is a former labor official who saw himself in his previous role as a reformer, defending workers' rights and rationalizing state administration. After leaving the labor bureaucracy, he realized that the only way to make use of his acquired expertise was as a paid consultant to employers. The tension between deeply engrained identity and current practice was resolved by construing employment relations as a public service that he could provide not simply for employers or workers but for a whole district. His interests, too, were translated, even as he set up trainings to translate the interests of employers, HR managers, and workers.

Enrollment

Even as the ties to other problematizations are cut off, the relevant parties still need to be enrolled to play the part assigned to them. This involves "multilateral negotiations during which the identit[ies] of the actors" are stabilized and coordinated (Callon 1984, pp. 211–14). A good example are the trainings for HR managers offered by HIRPA. In the course of these trainings, HR managers were subtly informed about the beneficial instrumentalities, from the point of view of employers, of the labor law—for example, how they could safely fire whistleblowers by working through the right set of procedures and preparing legal defenses in advance. They were also offered the possibility to earn a new professional qualification certificate for employment relations coordinator. This certification enabled them to work not only within their companies but also as public service mediators, thus offering opportunities for extra income, professional development, and promotion. In this way, the trainings enrolled HR managers to perform the work of legitimacy. Note how in this account one does not need to distinguish, as Weber did, between ulterior motives, like self-interest, and a genuine belief in legitimacy. Aligning self-interest with the belief in legitimacy is a practical problem for trainers and trainees.

Who Are the Staff?

Who exactly is doing the work of legitimacy? Who is translating whom? Here we return to the aforementioned empirical limitation of Weber's and Szelenyi's conception of the staff. As should be evident from the example of the Chinese labor law, the binary distinction between the staff, understood as employees of governmental agencies, and the ordinary public is a blunt tool with which to analyze who is performing the work of legitimacy and how. In its place, the relevant variable should be the degree to and manner in which individuals are integrated into the specific legal machinery in question, as well as the attributes they bring with them.

For this purpose, ANT is not particularly useful. ANT tends to adopt the point of view of the network builder (Eyal 2012) and as a result tells us relatively little about the actors being translated: the resistance they may offer or how their specific organizational location or their social attributes may shape their actions. It is particularly telling that in Callon's classic account, a large group of fishermen, who presumably got translated, ultimately leave the field and stop cooperating with the scientists. Callon has very little to say about this. Our approach to the work of legitimacy, therefore, builds on law and society scholarship that, although in conversation with ANT, pays much more attention to the foot soldiers of legitimacy: their organizational and field position, their experiences and interactions (Dezalay & Garth 2002, Edelman 2016, Espeland 1998, Gray & Silbey 2014, Hagan & Levi 2006, Heimer & Morse 2016). From this literature, we learn that there are several relevant dimensions to consider. First, there are multiple gradations of rank and organizational position among members of governmental bureaucracies. There are differences between junior staff, middle management, and the higher ranks. There are differences between members of the central administration and the staff of local governments at various levels. Especially relevant are the differences between planners or paper-pushers at the central office and the front-facing staff, the street-level bureaucrats (Giddens 1990, Lipsky 1980). Below, we discuss the case of vaccination mandates to illustrate the importance of considering this distinction when analyzing the work of legitimacy. How street-level bureaucrats exercise their discretion in making day-to-day decisions "contributes to the legitimacy of the welfare-service state" (Lipsky 1980, p. 15) but in other instances may undermine it.

Bureaucrats may also differ in terms of their stage in their career trajectories. Some may have just joined the bureaucracy and are learning the ropes. Others are on the cusp of promotion. Others are about to retire and leave. Others yet are part of a revolving door with industry. Others, finally, are contract workers hired for a fixed term by the government. Where one is positioned in their career trajectory shapes one's interests and identity by way of anticipation (Bourdieu 2000), and thus also one's investment in the rationales and mechanisms of defensibility. In our research on the implementation of the Chinese Labor Law, we found that labor officials who were nearing retirement perceived the law's implementation as an opportunity for a second act postretirement, and hence gave lectures in HIRPA's trainings for HR managers. Consequently, they were zealous advocates of the law and invested a great deal of ingenuity in translating its language into concrete mechanisms of compliance (Z. Fu & G. Eyal, manuscript in preparation).

But the work of legitimacy is not the sole province of bureaucrats and state employees. Nor is it something that only judges and lawyers do. Analysis of the work of legitimacy must include also all those members of the public who are not employed in the bureaucracy, and yet in one way or another participate in the formulation, transmission, advertising, and supervision of legal rules, regulations, and commands, including consultants, advisers, experts, independent contractors, managers of state–industry partnerships, HR managers, and leaders of nongovernmental organizations. Thus, in the case of the Chinese labor law, the work of legitimacy was orchestrated by HIRPA, a social organization led by former officials, consultants, and labor lawyers. Moreover,

the day-to-day work of legitimacy was the province of arbitrators, mediators, employment relations coordinators, and HR managers who straddle the border of the private and public sector. It bears repeating that such arrangements are not unique to the American "delegated state" (Campbell & Morgan 2011). Finding them in an authoritarian regime with a purportedly centralized and expansive bureaucracy indicates that they are essential to the work of legitimacy.

THE EXAMPLE OF VACCINATION MANDATES

We conceptualize, therefore, the work of legitimacy as carried out by an actor network that spans the boundary between state and society and that links together officials of various ranks, institutional locations, and career stages, as well as private experts, nongovernmental organizations, and even lay members of the public, along the lines developed by Eyal (2006, 2010, 2012, 2013, 2019). To illustrate, let us consider the case of vaccination mandates and the Centers for Disease Control and Prevention's (CDC's) schedule of childhood vaccinations. In doing so, we draw on and extend Lipsky's (1980, pp. 8–22) analysis of how the work environment of street-level bureaucrats, the fact that they interface directly and continually with clients, sets them apart from other bureaucrats in terms of typical interests, sources of discretion and autonomy, and the type of conflict with their superiors (pp. 14–22). Most relevant for the present illustration is Lipsky's (1980, p. 22) observation that "modern bureaucracies gain legitimacy by. . .commitments to standards of fairness and equity. But street-level bureaucrats are constantly confronted with the apparent unfairness of treating people alike." To the extent that the legitimacy of modern legal systems is shot through with a contradiction between the requirement for universal, standard treatment and the cultural demand for individualized treatment, street-level bureaucrats—and other client-facing experts who are not public servants and yet play a role in the legal machinery—are positioned differently than other bureaucrats with respect to this contradiction, which they negotiate through the discretion that they wrest from their superiors.

The legitimacy of childhood vaccination mandates depends primarily on organizing expert consensus, with a minimal element of inclusion (Eyal 2019, pp. 105–15). This is done by the CDC's Advisory Committee on Immunization Practices (ACIP), which formulates the expert consensus regarding which vaccinations should be given at what age and publishes it as a recommended schedule. The committee is composed of state officials from relevant agencies, as well as medical experts from academia, public health, and the private sector. Representatives of stakeholder organizations are present but lack voting rights. Even as many ACIP members are not government bureaucrats but independent experts, their role entails taking the point of view of centralized bureaucratic administration. The contribution of expertise is essential to the work of legitimacy undertaken by ACIP. ACIP translates the diffuse vaccination mandate into a concrete schedule that purports to specify precisely the steps taken in fulfilling the mandate; namely, the schedule specifies what it would mean to comply with the law. Moreover, the committee debates alternatives and counterarguments, thereby surrounding the schedule with a set of defenses that rely on the recognized expertise of its members, the fact that the debate is semipublic, the procedure of consensus formation, and the specific expert rationales and risk calculations invoked in arriving at a consensus.

Nonetheless, a great deal of conflict has centered on the practice of bundling several vaccines together at a relatively early age. ACIP's rationale, although informed by medical knowledge, is also one of centralized bureaucratic concern with, as Lipsky says, "standards of fairness and equity." Because poor parents are unlikely to be able to afford multiple doctor visits for each vaccine separately, the schedule requires that several vaccines be bundled together so they can be given in

one visit (Reich 2016, pp. 168–69). Doctors, however, are faced with an increasing demand from middle-class parents for individualized administration of the schedule: Up to 25% of American parents seek an individually tailored, "slow vax" schedule (p. 167). As Lipsky anticipated, at the point where legal mandates become public service interactions, at the "access points" of the expert system of vaccination (Giddens 1990), the street-level bureaucrats experience most acutely the contradiction between the requirement for universal, standard treatment and the cultural demand for individualized treatment. The contradiction weighs more heavily perhaps on public employees—e.g., doctors, nurses, community health workers, health visitors—but it is present also for health professionals in the private system, because they too must communicate and defend to their patients what compliance with vaccine mandates means in practice. Therefore, they too participate in the work of legitimacy. How they organize well visits, the routines in which they embed vaccination, the rationales they invoke when asked, their interactional style and ability to convey "facework commitments" (Giddens 1990)—these all become part of the edifice of defenses and translations surrounding vaccine mandates and increase the "the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct will ensue" (Weber 1978, p. 214).

In this context, the "paradox" Lipsky (1980, p. 19) noted regarding street-level bureaucrats is relevant also for doctors and nurses in the private sector: "Lower-level participants develop coping mechanisms contrary to an agency's policy but actually basic to its survival." Doctors and nurses at the access points find that to implement the mandates they need to find ways of offering, or at least appearing to offer, individualized flexibility and choice to clients. In other words, they must find practical ways of negotiating the contradiction between universal standards and individualized treatment, and they must do so while interactionally projecting an image as trustworthy stewards of their patients' interests as individuals. Or we can say this more forcefully. The legitimacy of vaccine mandates crucially depends on doctors' work of legitimacy. This work inevitably involves varying degrees of adapting and sometimes even contravening the mandates. Trust in the vaccination schedule depends on the trust patients have in their doctors. But doctors' trustworthiness depends on presenting themselves as acting in the best interests of their patients, and this almost inevitably requires signaling some distance from the schedule as a standard, top-down mandate. Of one of the doctors Reich (2016, pp. 152–55) interviewed, Kevin Sato, it can be truly said, as with Bourdieu (2008, p. 135), that it "would become necessary [for him] to violate norms. . .[in order] to safeguard the essential"; i.e., at times, the work of legitimacy entails breaking the rule to safeguard what the rule was intended to protect. Although he strongly endorsed the vaccination schedule to his patients, to win their trust he also insisted that it was ultimately their individual choice. He would lie awake at night worried that he was undermining the very vaccination mandate he was committed to defend. That the work of legitimacy is shot through with such contradictions becomes evident only if we take the point of view not of the network builder but of those nodes in the network—whether state employees or those in the private sector—who are doing the street-level work of determining what compliance means.

CONCLUSION

We are well aware that our approach runs against a fundamental objection, which is rooted in the way in which this word, legitimacy, is most commonly employed, its function in multiple discourses from the everyday to political theory. This was, in fact, Friedrich's (1972) main critique of Weber. Weber was confused, said Friedrich. In one word he conflated two distinct concepts, namely, authority and legitimacy. Authority is "the capacity to issue communications that can be

elaborated by convincing reasons." It is "an art of authoritative reasoning" common to all types of domination. It should be clear that our focus on the work of constructing the defensibility of commands comes quite close to what Friedrich means by "authority." Legitimacy, said Friedrich, is something else altogether, something more fundamental and at a deeper level, not the surface level of reasons and counter-reasons. It is the political claim to rule in the name of the people, the nation, tradition, natural law, God-given right, or charisma. It is the symbolic core, the fount from which the belief draws its strength independently of the art of authoritative reasoning. It is what is ultimately behind our sense that a command or a law is legitimate, namely, fair, correct, rational, divine, or just. When the psychological approach or neo-institutionalists refer legitimacy back to political culture or to general cultural approval or even to institutionalization, they are essentially taking Friedrich's side in the debate. Legitimacy stands for the Ur-fount from which the sense of justice or fairness flows.

We, on the other hand, take Weber's side in the debate. We do not think he was confused at all. On the contrary, he was ahead of his time, toying with the idea that forms of government are, as he put it, "techniques, like any kind of machinery," as if he was a Latourian for whom machines and humans were both "Actants." If forms of government are techniques, like any kind of machinery, then there is no Ur-fount from which legitimacy flows. Legitimacy is identical with authority, with the art of authoritative reasoning (or dare we say it, discourse), which merges with compliance, namely, "the probability that to a relevant degree the appropriate attitudes will exist, and the corresponding practical conduct ensue" (Weber 1978, p. 214). Instead of referring legitimacy back to some Ur-fount, we propose a symmetrical and praxeological approach, focused on the work of legitimacy, the work of constructing arrangements and discursive defenses that observably constitute compliance. We do not make a strong distinction between legitimacy and compliance, nor do we single out some arrangements as constituting symbolic compliance, explainable by reference to self-interest, whereas other arrangements are treated by default as constituting genuine compliance, explainable by reference to legal language. Instead, we suggest that all such arrangements should be analyzed using the tools of the sociology of translation, supplemented by law and society scholarship that pays closer attention to the field and organizational positions of the foot soldiers of legitimacy: As they construct the meaning of compliance in concrete settings, these actors also translate and align their own interests and the interests of other actors, who are thereby integrated into the legal machinery in question.[7]

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[7] No lover of ANT, Bourdieu too rejects the idea of an Ur-fount of legitimacy. In his Collège de France lectures *On the State*, he analyzed Kafka's *The Trial* as a novel animated by

> the search for the place where the true identity of social agents is defined. . .a sociological search for a central place where the resources of legitimate authority are concentrated, and which is accordingly the point where the regression stops. . .there is a moment at which you have to stop, and this place where you stop is the state. (Bourdieu 2014, pp. 67–69)

Jozef K., of course, never stops and never finds this place, this Ur-fount from which all legitimacy flows. Because the novel is incomplete, it is unclear what Kafka intended, but as it stands, *The Trial* is a novel that simultaneously formulates and dissolves the myth of the state. It reveals that the state itself—not just the fragmented American state but also the notoriously centralized French state—is "no more than the endlessly retreating horizon of an infinite series of intermediate terms" (Bourdieu 2008, pp. 76–77).

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