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## Reducing Prejudice Through Law: Evidence from Experimental Psychology

Roseanna Sommers & Sara Emily Burke<sup>1</sup>

### Abstract

Can antidiscrimination law effect changes in public attitudes toward minority groups? Could learning, for instance, that employment discrimination against people with clinical depression is illegal cause members of the public to be more accepting toward people with mental health conditions? In this Article, we report the results of a series of experiments that test the effect of inducing the belief that discrimination against a given group is legal (vs. illegal) on interpersonal attitudes toward members of that group. We find that learning that discrimination is unlawful does not simply lead people to believe that an employer is more likely to face punishment for discriminatory behavior. It also leads people to report less prejudicial attitudes and greater feelings of interpersonal warmth toward members of that group. Conversely, when people learn that the law *tolerates* discrimination against a group, it licenses more prejudicial attitudes. Importantly, we demonstrate that individuals vary substantially in the degree to which they view courts as legitimate authorities, and that this orientation is systematically related to the degree to which prejudicial attitudes shift in response to legal rules.

### I. Introduction

Can antidiscrimination law affect prejudicial attitudes toward minority groups? Plenty of commentary has suggested that it cannot. The late nineteenth century sociologist William Graham Sumner famously argued that people must be persuaded to change their views on their own terms, rather than having social mores imposed by legal edict.<sup>2</sup> The Supreme Court in *Plessy v. Ferguson* similarly asserted that “Legislation is powerless to eradicate racial instincts . . . .”<sup>3</sup> This same reasoning was invoked to justify limited federal intervention in enforcing school desegregation following *Brown v. Board* in 1954.<sup>4</sup>

In *The Nature of Prejudice*, pioneering social psychologist Gordon Allport contested the view that “Stateways cannot change folkways”<sup>5</sup> He argued that antidiscrimination laws *can* change attitudes, through the specific mechanism of intergroup contact. Writing before the passage of the Civil Rights Act of 1951, he

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<sup>1</sup> Authors contributed equally.

<sup>2</sup> See WILLIAM GRAHAM SUMNER, *FOLKWAYS: A STUDY OF THE SOCIOLOGICAL IMPORTANCE OF USAGES, MANNERS, CUSTOMS, MORES, AND MORALS* 77 (1906) (“Vain attempts have been made to control the new order by legislation. The only result is the proof that legislation cannot make mores.”).

<sup>3</sup> 163 U.S. 537 (1896).

<sup>4</sup> President Eisenhower noted that “[I]t is difficult through law and through force to change a man’s heart,” adding that “we must all . . . help to bring about a change in spirit so that extremists on both sides do not defeat what we know is a reasonable, logical conclusion to this whole affair . . . .” *Text of President Eisenhower’s News Conference on Foreign and Domestic Affairs*, N.Y. TIMES, Sept. 6, 1956, at 10 (cited in Christopher W. Schmidt, *Conceptions of Law in the Civil Rights Movement*, 1 UC IRVINE L. REV. 641, 646-47).

<sup>5</sup> GORDON WILLARD ALLPORT, KENNETH CLARK & THOMAS PETTIGREW, *THE NATURE OF PREJUDICE* 469 (1954).

examined state and municipal laws barring discrimination in employment and housing, and argued that certain forms of social contact between members of different groups—namely, contact under conditions of equality—can diminish prejudice, and antidiscrimination legislation can engender such contact.<sup>6</sup> Around the same time, a groundbreaking study by psychologists Morton Deutsch and Mary Ellen Collins found that white families who had been assigned to live in integrated public housing expressed less racist attitudes toward their Black neighbors than did white families who had been assigned to live in racially segregated buildings.<sup>7</sup> “From these findings,” wrote social psychologist Elliott Aronson, “it would appear that stateways *can* change folkways, that you can legislate morality—not directly, of course, but through the medium of equal-status contact.”<sup>8</sup>

In this Article, we ask whether it is possible for the law to shift prejudicial attitudes in a more direct fashion. Is it possible for the law *itself* to send a signal that causes changes in prejudicial attitudes—changes that do not operate through the mechanism of increased intergroup contact? Could law transform attitudes because people care what the law says?

### A. The Expressive Function of Law

Many legal scholars have suggested that legal rules affect attitudes and behavior beyond their instrumental consequences, through what is known as the “expressive function of law.”<sup>9</sup> Even laws that are seldom enforced or invoked can be powerful tools for communicating norms and values to the public.<sup>10</sup> Expressivists do not deny that people are motivated to avoid sanctions, but posit that law may shape behavior in additional ways not accounted for by deterrence.<sup>11</sup>

Scholars have proposed several potential mechanisms through which this kind of change might occur. One account suggests that members of the public assume that legal rules represent societal consensus. Accordingly, people who wish to avoid alienating

<sup>6</sup> *Id.* See also Linda C. McClain, *Civil Rights Act of 1964 and Legislating Morality: On Conscience, Prejudice, and Whether Stateways Can Change Folkways*, 95 B.U. L. REV. 891 (2015). See generally Thomas F. Pettigrew & Linda R. Tropp, *A Meta-analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOCIAL PSYCH. 751 (2006), <https://doi.org/10.1037/0022-3514.90.5.751>; THOMAS F. PETTIGREW & LINDA R. TROPP, WHEN GROUPS MEET: THE DYNAMICS OF INTERGROUP CONTACT (2011).

<sup>7</sup> MORTON DEUTSCH & MARY ELLEN COLLINS, INTERRACIAL HOUSING: A PSYCHOLOGICAL EVALUATION OF A SOCIAL EXPERIMENT (1951).

<sup>8</sup> ELLIOT ARONSON, READINGS ABOUT THE SOCIAL ANIMAL 187 (2003) (emphasis in original).

<sup>9</sup> Maggie Wittlin, *Buckling Under Pressure: An Empirical Test of the Expressive Effects of Law*, 28 YALE J. REG. 419, 420 (2011).

<sup>10</sup> Examples include laws banning flag burning and hate speech. Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021 (1996). See also Dan Kahan, *Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 424 (1999) (“According to Kristin Luker, abortion laws (both civil and criminal) spark controversy because they confer esteem on women who occupy traditional domestic roles and express contempt for those who inhabit modern professional ones. Robert Ellickson traces the dispute over range-closure laws to the desire of western ranchers to erect a symbolic barrier to the erosion of their status. Disputes over public monuments, Sanford Levinson has shown, reflect the rivalries spawned by multiculturalism. Jack Balkin demonstrates how such rivalries affect interpretation of the Constitution.”).

<sup>11</sup> See Wittlin, *supra* note 9, at 420.

their peers may conform their behavior to the law, without needing to observe descriptive norms directly. Richard McAdams has promoted this view, arguing that because law is democratically produced, people often look to the law to ascertain public opinion and to generate expectations about how others think and behave.<sup>12</sup> People conform to the perceived consensus because they are motivated to gain approval from others, including from strangers.<sup>13</sup>

Another way in which law's expressive power might cause a change in attitudes is through its moral authority. On this view, courts function like celebrities: people treat them as authorities whose opinions they respect, admire, and emulate. As part of this general role modeling effect, people may think of courts (or the law more generally) as a kind of "credible expert" on moral questions.<sup>14</sup> Much as pharmacologists are seen as authorities on which compounds are salutary and which are poisonous, judges may be seen as experts on what conduct should be punished and what should be tolerated. Both of these hypothesized mechanisms are consistent with classic social psychology theories of attitude change, which posit that people are more persuaded by social authorities and by the opinions of topic-area experts than by ordinary people without notable authority or expertise.<sup>15</sup>

Another, related, idea is that people are motivated to behave in accordance with the law, in virtue of it being the law.<sup>16</sup> Perhaps, rather than thinking like the Holmesian "bad man,"<sup>17</sup> who is interested in knowing the law only to the extent that it helps him predict what consequences will befall him if he engages in certain conduct, people instead think more like the "puzzled man," theorized by H.L.A. Hart.<sup>18</sup> The puzzled man is

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<sup>12</sup> Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 340 (2000). See also Margaret E. Tankard & Elizabeth Levy Paluck, *The Effect of a Supreme Court Decision Regarding Gay Marriage on Social Norms and Personal Attitudes*, 28 PSYCHOL. SCI. 1334 (2017) (reporting two empirical studies suggesting that institutional decisions by the Supreme Court can shift public perceptions of social norms). Tankard and Paluck explain that people "use norms as a guide to behavior because they are motivated to be accurate in their social judgment and also because they wish to avoid social rejection." However, they note that people can perceive shifts in social norms without changing their own views accordingly: "social norms may not always align with personal attitudes." *Id.* at 1335.

<sup>13</sup> *Id.*

<sup>14</sup> FREDERICK SCHAUER, *FORCE OF LAW* 6 (2015) ("[I]t is often claimed that many people obey the law just because it is the law and not because of what the law can do to them if they disobey.").

<sup>15</sup> See, e.g., DOLORES ALBARRACÍN & PATRICK VARGAS, *Attitudes and Persuasion: From Biology to Social Responses to Persuasive Intent*, in HANDBOOK OF SOCIAL PSYCHOLOGY, 394 (Susan T. Fiske, Daniel T. Gilbert & Gardner Lindzey eds., 5th ed. 2010); ROBERT B. CIALDINI, *INFLUENCE: THE PSYCHOLOGY OF PERSUASION* (Rev. ed. 2006).

<sup>16</sup> In Plato's *Crito*, Socrates states that "[Y]ou must not give way or retreat or abandon your position. Both in war and in the law courts and everywhere else you must do whatever your city and country command, or else persuade them in accordance with universal justice, but violence is a sin even against your parents, and it is a far greater sin against your country." Frances Olsen, *Socrates on Legal Obligation: Legitimation Theory and Civil Disobedience*, 18 GA. L. REV. 929, 931-32 (1983).

<sup>17</sup> Oliver Wendell Holmes, Jr., *The Path of the Law*, 110 HARV. L. REV. 991, 993 (1997) ("If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.").

<sup>18</sup> HERBERT LIONEL ADOLPHUS HART, *THE CONCEPT OF LAW* 40 (P.A. Bullock, J. Raz & L. Green eds., 3rd ed. 2012).

interested in knowing what the law is because he is motivated to “do the lawful thing,” irrespective of the threat of sanctions.<sup>19</sup> In Frederick Schauer’s description of the puzzled man, he takes “the existence of law qua law as a reason for action and a reason for decision.”<sup>20</sup> Scott Shapiro proposes that “there are many such people in actual societies.”<sup>21</sup> However, surprisingly little empirical research has investigated whether people take law itself, apart from sanctions, as a reason to act, and whether such people account for a substantial proportion of the population.<sup>22</sup>

Thus, in this research, we ask whether individuals vary in the extent to which they believe the law should be obeyed because it is the law. We further ask whether individual variation in this tendency influences the degree to which people shift their attitudes in response to information about legal rules.

Importantly, we study these questions as they relate to laws regarding discriminatory behavior. To our knowledge, few previous studies have pursued a causal link between antidiscrimination law and the public’s regard for the social groups such laws protect. This Article seeks to fill that gap by experimentally manipulating beliefs about whether legal protection from discrimination has been granted or denied to a minority group, and observing how this manipulation affects majority-group members’ regard for members of that minority group.

We are not primarily interested in whether learning that discriminatory conduct is (or is not) legally prohibited affects people’s likelihood of engaging in the conduct that is (or is not) subject to legal sanction.<sup>23</sup> Instead, we are interested in whether law can shift prejudice and stigma more broadly, beyond deterring the behavior that is prohibited.

For instance, does learning that it is illegal to discriminate against people with mental health conditions such as clinical depression cause members of the public to become more accepting toward people with depression? Do they become more willing to socially affiliate with depressed people, and feel more interpersonal warmth toward them? The Americans with Disabilities Act prohibits discrimination in employment, transportation, and public accommodations; it does not require anyone to be more accepting of depressed individuals as neighbors, friends, and family. Yet, we sought to examine whether the power of law might extend to these other forms of stigma and status—whether it might change prejudice and thereby extend to domains beyond the law’s grasp.

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<sup>19</sup> FREDERICK SCHAUER, *Social Science and the Philosophy of Law*, in THE CAMBRIDGE COMPANION TO THE PHILOSOPHY OF LAW 95, 106 (John Tasioulas ed., 2020).

<sup>20</sup> *Id.* at 106.

<sup>21</sup> SCOTT J. SHAPIRO, LEGALITY 69 (2011).

<sup>22</sup> SCHAUER, *supra* note 19, at 108 (“[I]t is surprising that so little research has been pursued on whether people actually behave as Socrates and successor believers in the existence of [an obligation to obey the law] have argued they should behave, or whether they... make what they think is the right decision, the law aside.”) (internal citations omitted).

<sup>23</sup> Laura G. Barron & Michelle Hebl, *The Force of Law: The Effects of Sexual Orientation Antidiscrimination Legislation on Interpersonal Discrimination in Employment*, 19 PSYCH., PUB. POL’Y & L. 191 (2013) (finding that when employers were told that it would be illegal to discriminate against an applicant on the basis of sexual orientation, they acted more friendly).

## B. Previous Empirical Research

While such a link between law and internalized attitudes has been theorized, few studies in this area have used causal methods.<sup>24</sup> For example, a longitudinal study conducted by Kreitzer and colleagues examined public support for marriage equality before versus after the 2009 Iowa Supreme Court ruling that legally recognized same-gender marriage in the state.<sup>25</sup> The authors argued that the ruling served as a signal that social norms had changed, which “pressured some respondents to modify their attitudes.” These studies, however, cannot rule out the possibility that the causal arrow points in the other direction: perhaps the court’s ruling was affected by norms that were already changing.

Similarly, another study from 2019 found a possible link between the legal status of same-gender marriage and public attitudes.<sup>26</sup> The researchers looked at population-level implicit and explicit attitudes toward gay and lesbian people over time, from 2005 to 2016. They found that overall, attitudes became less severely anti-gay during this twelve-year period, but the speed of change varied by state, with attitudes changing faster in states that had recently legalized same-gender marriage. As with other observational research, this study provided evidence in support of the hypothesis that changes in law preceded changes in social attitudes, but it did not establish a causal link. It is possible, for instance, that the timing of the states’ legislative decisions was influenced by changes in sexual prejudice within each state—or by changes in other social factors that contributed to later changes in sexual prejudice.

## A. The Present Research

In the present research, we randomly vary the legal regime presented to participants, who are, in expectation, identical in their existing levels of prejudice. We

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<sup>24</sup> *But see* Cody B. Cox & Laura Barron, *The Effects of Changing Anti-Discrimination Legal Standards on the Evaluation of Older Workers*, 42 J. APPLIED SOC. PSYCH. E198 (2012) (reading information describing a high evidentiary standard for age discrimination (vs. a low standard) led people to view older people as less “suitable for their jobs”); Barron & Hebl, *supra* note 23 (Study 3: lab study in which “prior to interviewing a gay or lesbian confederate applicant for a management position, 229 participants were led to believe that their area does or does not have sexual orientation antidiscrimination legislation” and finding that when they interviewed a confederate for a job, they showed less prejudice, as measured by spontaneous use of anxiety-related words and nonfluencies (uh, er, umm), which imply nervousness or stress, and that the interviews lasted longer. The authors conclude that “reduced discrimination still occurs when legal awareness is randomly assigned and manipulated in a laboratory setting.”); PAUL M. SNIDERMAN & THOMAS PIAZZA, *THE SCAR OF RACE* 131 (1993) (manipulation: congress has passed a law setting aside a certain number of federal contracts for minorities vs some people want such a law. Finding: majority supported when they believed it was already law, but majority opposed when they believed it was not. From book excerpt (p. 131): “some additional people may be willing to support a racial policy knowing it is the law of the land, either because they think their views ought to conform to the law or because they suppose that, having been made into a law, a policy must have merit.”).

<sup>25</sup> Rebecca J. Kreitzer, et al., *Does Policy Adoption Change Opinions on Minority Rights? The Effects of Legalizing Same-Sex Marriage*, 67 POL. RSCH. Q. 795 (2014).

<sup>26</sup> Eugene K. Ofofu, et al., *Same-Sex Marriage Legalization Associated with Reduced Implicit and Explicit Antigay Bias*, 116 PROC. NAT’L ACAD. OF SCIS. 8846 (2019).

test whether inducing the belief that discrimination is legal (vs. illegal) affects interpersonal attitudes toward individuals within that group. Thus, our studies eliminate the possibility that an observed link between law and reported attitudes could be explained by the legal regime changing in response to attitudes.

Our findings indicate that when people learn that discrimination against a given minority group is unlawful, they infer that members of the group are held in higher regard by society (Study 1). We also find this intervention leads respondents to report less prejudicial attitudes toward members of the minority group (Studies 2-3). Taken together, these findings underscore the expressive power of law.

This Article offers two additional contributions. First, it shows that perceptions of legal legitimacy are an important factor that moderates the link between antidiscrimination law and attitude change. We find that individuals vary substantially in the degree to which they view courts as legitimate authorities, and that only people who view courts as high in legitimacy show a shift in their prejudicial attitudes in response to the law. Thus, this Article suggests that the expressive power of law may be heightened among—or perhaps even confined to—those who, like Hart’s “puzzled man,” take the law qua law as morally authoritative.

Second, this Article examines these psychological processes in the context of prejudice against people with clinical depression, a relatively understudied kind of prejudice.<sup>27</sup> Mental health discrimination is pervasive: 79% of those with Major Depressive Disorder report facing discrimination in at least one area of their life.<sup>28</sup> Employers are less likely to hire people who have an indicated history of mental illness, and over 60% of people living with mental illness report anticipating or experiencing discrimination while at work.<sup>29</sup> Only about half of workers say they are comfortable discussing their mental illness in the workplace, and a third say they fear retaliation if they seek mental health treatment.<sup>30</sup> In response to pervasive discrimination and anticipated stigma, 60% of people living with mental illness have stopped themselves from pursuing work or education, according to one study.<sup>31</sup> In healthcare, people with mental illness including depression have higher rates of mortality, face stigma from healthcare providers that reduces quality of care, and often delay or fail to seek both

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<sup>27</sup> We leave ambiguous in the study scenarios whether the individual has Major Depressive Disorder.

<sup>28</sup> Antonio Lasalvia, et al., *Global Pattern of Experienced and Anticipated Discrimination Reported by People with Major Depressive Disorder: A Cross-Sectional Survey*, 381 LANCET 55 (2013).

<sup>29</sup> Crosby Hipes, et al., *The Stigma of Mental Illness in the Labor Market*, 56 SOC. SCI. RSCH. 16 (2016); E.P.M. Brouwers, et al., *Discrimination in the Workplace, Reported by People with Major Depressive Disorder: A Cross-Sectional Study in 35 Countries*, 6 BMJ OPEN 2 (2016); Ashley B. Batistini, et al., *Bias in Hiring Applicants with Mental Illness and Criminal Justice Involvement: A Follow-Up Study with Employers*, 44 CRIM. JUST. & BEHAV. 777 (2017).

<sup>30</sup> Press Release, American Psychiatric Association, About Half of Workers Are Concerned About Discussing Mental Health Issues in the Workplace; A Third Worry About Consequences If They Seek Help (May 20, 2019) (on file with author).

<sup>31</sup> E.P.M. Brouwers, et al., *Discrimination in the Workplace, Reported by People with Major Depressive Disorder: A Cross-Sectional Study in 35 Countries*, 6 BMJ OPEN 2 (2016).

mental and physical care due to anticipated or experienced discrimination.<sup>32</sup> Discrimination against people with depression disproportionately affects women, who have higher rates of depression than men in every age group.<sup>33</sup> [OBJ:OBJ:OBJ]

Legally, discrimination against people with mental health conditions violates federal disability law in many instances. The Americans with Disabilities Act (ADA) defines disability as “a physical or mental impairment that substantially limits one or more major life activities of such individual.” Individuals additionally must have “a record of such impairment” or of being regarded as having such an impairment.”<sup>34</sup> Following the ADA Amendments Act of 2008, the U.S. Equal Employment Opportunity Commission (EEOC) has acknowledged that clinical depression “easily” qualifies as a disability.<sup>35</sup> Because “physical or mental impairment” includes “any mental or psychological disorder, such as . . . emotional or mental illness . . .,” most diagnosable mental health conditions satisfy the definition of impairment under the ADA.<sup>36</sup>

Nonetheless, we expected that study participants would find it believable both that discrimination based on mental illness is legally prohibited *and* that it is not.<sup>37</sup> Because our experiments randomly assign participants to evaluate one or the other legal regime, a key requirement of our research is that participants can be induced to believe either regime governs. In developing our study stimuli, we discovered that most participants were incredulous when told that discrimination against a religious minority was legal; conversely, they were unwilling to entertain the possibility that the law might prohibit discrimination based on an applicant’s status as a sex offender. Mental health discrimination, our pilot-testing revealed, occupied a sweet spot, where most participants found either legal regime believable.

This Article proceeds as follows. In Study 1, we tested the hypothesis that legal regimes can send a signal about the status of a social group. While this claim is frequently asserted, we sought to demonstrate this signaling function empirically, as it is a prerequisite for our application of the expressive theory of law to the domain of discrimination. To isolate the inferences that people draw *solely* on the basis of a legal regime—and not based on their prior views toward the groups in question—we presented Study 1 participants with a fictional hypothetical society. We find that the law can indeed send signals about societal values, and that people can infer group hierarchies based

<sup>32</sup> Patrick W. Corrigan, et al., *Mental Health Stigma and Primary Health Care Decisions*, 218 PSYCH. RSCH. 35 (2014); Graham Thornicroft, Diana Rose & Aliya Kassam, *Discrimination in Health Care Against People with Mental Illness*, 19 INT’L. REV. PSYCHIATRY 113 (2007); Claire Henderson et al., *Mental Health-Related Stigma in Health Care and Mental Health-Care Settings*, 1 LANCET PSYCHIATRY 467 (2014).

<sup>33</sup> Laura A. Pratt & Debra J. Brody, *Depression in the U.S. Household Population, 2009-2012*, 172 NCHS DATA BRIEF 1 (2014).

<sup>34</sup> Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101-12213 (2018).

<sup>35</sup> 29 C.F.R. § 1630.2(j)(3)(iii) (2020). See Katie Eyer, *Claiming Disability*, 101 B.U. L. REV. 547, 554, 558 n.42 (forthcoming 2021) (explaining that the ADA Amendments Act of 2008 added interpretive rules expanded the definition of disability).

<sup>36</sup> *Id.* at 564 (citing 29 C.F.R. § 1630.2(h) (2020)).

<sup>37</sup> In pilot testing, we learned that participants were unwilling believe that other forms of discrimination, such as discrimination against religious minorities, was legal. Likewise, they were unwilling to believe that it was illegal for employers to refuse to hire sex offenders. See *infra*.

solely on legal regimes, even when evaluating an abstract, decontextualized society with unfamiliar social groups.

Having established in Study 1 that people do engage in this pattern of thinking in the abstract, we proceed in Studies 2-3 to experimentally manipulate participants' beliefs about their own laws in the United States, as they relate to real minority groups with which they are familiar. Study 2 asks whether inducing beliefs about the legality of discrimination can change participants' attitudes toward a real group with which respondents are already familiar: people with clinical depression.<sup>38</sup> Study 2's findings show that, yes, inducing the belief that employment discrimination against people with clinical depression is illegal can alter respondents' attitudes toward individuals with mental health conditions. Those who are told that such discrimination is illegal report less prejudicial attitudes than those who are led to believe such discrimination is legal. Study 2 also identifies an important moderator: views of court legitimacy. Only participants who viewed the law as morally authoritative displayed a change in their personal attitudes consistent with the value signaled by whether mental health discrimination was described as legal versus illegal.

Study 3 confirms this finding with a pre-registered replication. To demonstrate the robustness of Study 2's discovery that only participants who are high in trust in the courts change their social attitudes in response to law, we repeat the same procedure with a few modifications. Study 3 yields substantially the same results as Study 2, suggesting that the findings are reliable and robust.

## II. Pilot and Study 1

Study 1 tested the hypothesis that when a society chooses not to prohibit harmful treatment against a group, participants infer that the society devalues the victims of the harmful behavior, as well as the victims' entire social group. It accomplished this by introducing a fictional hypothetical society of sentient beings known as Fendles and Zorpies, and describing a fictional harmful action known as "gomping."<sup>39</sup> We instructed participants to imagine a society and an unspecified interpersonal behavior because we sought to learn whether participants would draw inferences about the social standing of groups based solely on information about the law. If these inferences are habits of mind related to how participants think about the concept of law, then they should emerge in hypothetical scenarios divorced from the complexities of US culture and politics.

<sup>38</sup> Americans have concrete negative beliefs and attitudes about people with depression, and these beliefs and attitudes can facilitate discrimination against people with depression as a group. It is possible to discuss these forms of prejudice and discrimination in a manner analogous to discrimination on the basis of physical disability status. Lindsey L. Monteith & Jeremy W. Pettit, *Implicit and Explicit Stigmatizing Attitudes and Stereotypes About Depression*, 30 J. SOC. & CLINICAL PSYCH. 484 (2011); Annie B. Fox, et al., *Conceptualizing and Measuring Mental Illness Stigma: The Mental Illness Stigma Framework and Critical Review of Measures*, 3 STIGMA & HEALTH 348 (2018); NAT'L ACAD. SCIS., ENG'G & MED., ENDING DISCRIMINATION AGAINST PEOPLE WITH MENTAL AND SUBSTANCE USE DISORDERS: THE EVIDENCE FOR STIGMA CHANGE (2016).

<sup>39</sup> Other psychological research has used fictional groups in hypothetical scenarios in order to capture relevant mental processes in a controlled way, e.g., Eric L. Uhlmann, Victoria L. Brescoll & Elizabeth L. Paluck, *Are Members of Low Status Groups Perceived as Bad, or Badly Off? Egalitarian Negative Associations and Automatic Prejudice*, 42 J. EXPERIMENTAL SOC. PSYCH. 491 (2006).

We first ran a pilot study ( $n = 251$ ) to examine whether participants would attach value judgments to the winners and losers of legal cases in a purely fictional context. Results indicated that when a court rules that it is legal to do something harmful to an individual (a “Fendle”), it signals that the society in question devalues that individual, compared to situations in which a court rules it is illegal, or that it is legal to do something non-harmful.<sup>40</sup> The pilot confirmed that participants would draw inferences about the relative value and status of individuals in a legal scenario, even when the scenario is about a hypothetical fictional world. Thus, we proceeded with Study 1, in which the harmful action involved a group-level disparity and we measured judgments of the social group as a whole rather than solely an individual victim.

### A. Method

For Study 1 we recruited 124 participants<sup>41</sup> on Amazon Mechanical Turk in 2017. Participants were instructed that they would be presented with a description of events taking place “on a planet populated by a society of intelligent beings.”<sup>42</sup> They were told that “in this society, there are two types of beings: Fendles and Zorpies.” They were further informed, “In this world, gompng is an action that one being can do to another. Beings who are gomped are usually unhappy about it. In general, it is common for Fendles to gomp Zorpies, but rare for Zorpies to gomp Fendles.”<sup>43</sup>

Thus, we left ambiguous whether being gomped is objectionable because it is harmful, because it is insulting, or for some other reason. We did this because we wanted to abstract away from any specific kind of indignity (e.g., material harm, disrespect, stigma) and because we wanted to see what inferences people would draw without knowing their severity or nature of the unwanted conduct. In order to establish that the legal issue in question is connected to group membership, we specified that gompng was an action Fendles take against Zorpies.

Participants went on to read about a recent case in which a Fendle gomped a Zorpie, who was not happy about it. Then, in the key manipulation, participants were told either that “the legal system chose to punish” the Fendle who gomped the Zorpie “because gompng is illegal in this world” (Illegal condition) or that “the legal system

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<sup>40</sup> Specifically, we varied whether an unspecified action (called “gompng” or “blicking”) was described as legal or illegal, and whether individuals who were gomped (or blicked) were usually “unhappy about” it or “okay with” it. Participants read about a specific Fendle (or “Tupple”) who gomped (or blicked) a specific other Fendle (or Tupple). In accordance with the legality manipulation, we varied whether the perpetrator was punished or not. When the action was harmful, we found that the recipient of the action was evaluated less favorably if the perpetrator went unpunished than if the perpetrator was punished. This pilot study was conducted in 2016.

<sup>41</sup> 133 completed the survey, and we excluded 4 who responded “yes” to the question, “Were any of your answers in this survey intended as jokes?” and 5 who declined to respond to that question. The resulting sample included 63 men, 61 women; ages ranged from 22 to 67,  $M = 35.53$ ,  $SD = 10.89$ ,  $Mdn = 32$ .

<sup>42</sup> In case the fictional name mattered, in the pilot study we randomly varied the names. We observed no significant effect of this manipulation.

<sup>43</sup> We randomly varied the name of the fictional action. Sometimes it was “gompng”; other times it was “blicking.” We observed no significant effect of this manipulation.

chose not to punish” the Fendle “because gomping is not illegal in this world” (Legal condition).

### 1. Participants’ own views

After reading the scenario, participants were asked, “How do you feel about Zorpies in general?” and were given a “feeling thermometer”<sup>44</sup>—a 0-100 sliding scale that ranged from “very negative” to “very positive.” We were particularly interested in views toward the victim’s group (“Zorpies in general”). For completeness, and to mask the purpose of the study, we asked the same questions regarding the individual beings involved in the incident (the particular Fendle and the particular Zorpie) as well as the perpetrator’s group (“Fendles in general”).

### 2. Perceptions of social devaluation

Participants also rated their perceptions of how beings within the fictional society evaluated the victim’s group (“How do you think other beings in the society feel about Zorpies in general?”).<sup>45</sup> Again, we were primarily interested in participants’ inferences about the victim’s group, but for completeness we also asked about each of the individual agents and the perpetrator’s group.

### 3. Perceptions of social status

A key outcome measure of interest was the inferences participants would draw about the status of the group to which the victim belonged. Participants completed three items that were combined into a single index representing perceptions of the group’s social standing:

- How powerful do you think Zorpies in general are in this society? (0 = Not at all powerful, 100 = very powerful)
- How respected do you think Zorpies in general are in this society? (0 = Not at all respected, 100 = very respected)
- Do you think Zorpies in general have high or low social status? (0 = very low social status, 100 = very high social status)

Participants answered the same measures about the individual agents and the perpetrator’s group.

### 4. Perceptions of the action

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<sup>44</sup> Duane F. Alwin, *Feeling Thermometers Versus 7-Point Scales: Which Are Better?*, 25 SOCIO. METHODS & RSCH. 318 (1997); Leonard J. Simms, et al., *Does the Number of Response Options Matter? Psychometric Perspectives Using Personality Questionnaire Data*, 31 PSYCH. ASSESSMENT 557 (2019); HERBERT F. WEISBERG & ARTHUR H. MILLER, *Evaluation of the Feeling Thermometer*, in A REPORT TO THE NATIONAL ELECTION STUDY BOARD BASED ON DATA FROM THE 1979 PILOT SURVEY (1979), <http://www.electionstudies.org/resources/papers/pilotrpt.htm>.

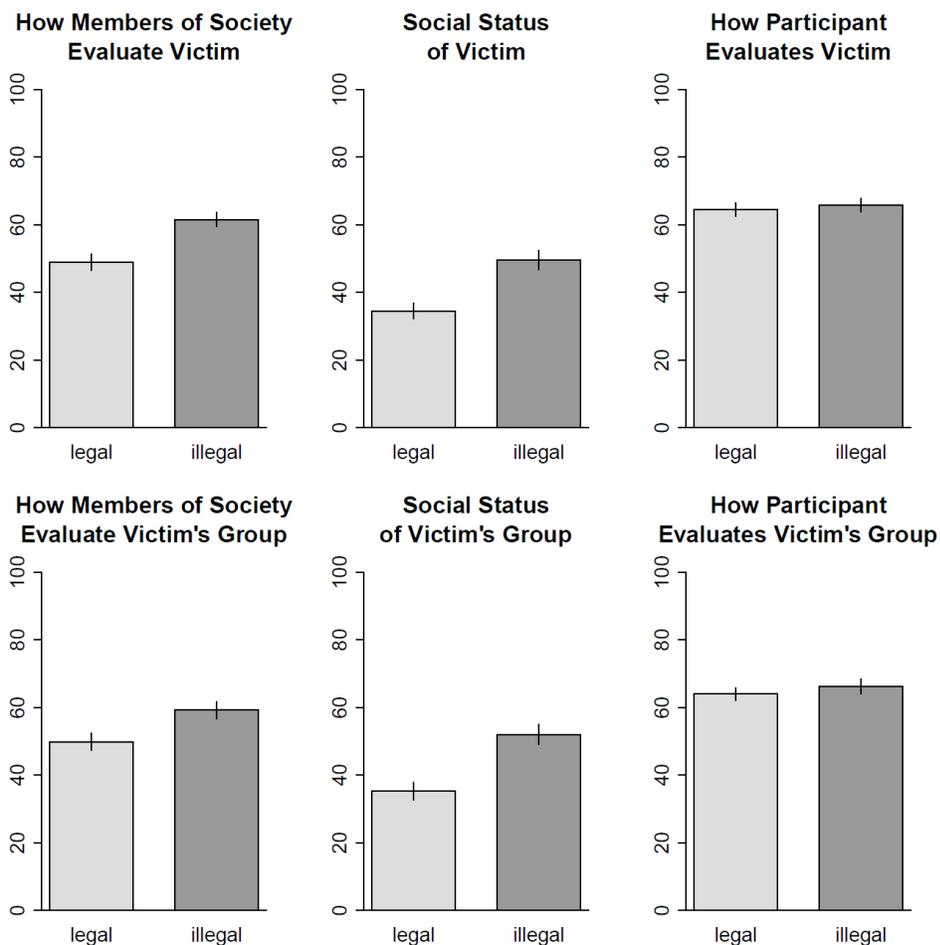
<sup>45</sup> Emphasis added. In the version viewed by participants, the phrase “Zorpies in general” was instead emphasized to distinguish from items about the individuals and the perpetrator’s group.

Finally, participants evaluated the action in question (“gomping”) along several dimensions: from “morally wrong” to “morally good”; from “a bad thing to do” to “a good thing to do”; from “harmful” to “helpful”; and from “should be legal” to “should be illegal.”<sup>46</sup> Before exiting the study, participants filled out a sociodemographic survey.<sup>47</sup>

## B. Results

### 1. Primary results

**Figure 1.** Evaluation and social status of victim and victim’s group depending on legality of discrimination.



Our key hypothesis was that when a society fails to punish conduct that one group tends to perpetrate against another group, people infer—without any other context—that

<sup>46</sup> 4 items, Cronbach’s  $\alpha = .95$ .

<sup>47</sup> They were also asked to rate the legitimacy of the court system in this fictional society. *See infra*. In general, their perceptions of the court legitimacy did not interact with their judgments in significant ways. *See Appendix*.

the victimized group is inferior in social status. By contrast, when the society prohibits the behavior and punishes instances of it when it occurs, no such inference is drawn.

First, we tested the simpler version of the hypothesis, focusing on the individual victim rather than the victim's social group. When the unwelcome action was not prohibited, participants believed that the victim was more socially devalued compared to when the action was illegal.<sup>48</sup> Participants also rated the victim as lower in social status when the action was legal than when it was illegal.<sup>49</sup>

Second, we examined whether this phenomenon extends to devaluation of the victim's social group as a whole, characteristically targeted by the same harmful action. We found that it does: when the unwelcome action was legal, participants judged the group as a whole to be more socially devalued compared to when the action was illegal.<sup>50</sup> The same was true of perceptions of status: participants rated the social group as a whole as lower in power, respect, and social status when the action was legal than when it was illegal.<sup>51</sup>

Third, we examined whether participants' own perceptions were affected by the legal regime. We solicited these attitudes first, before asking questions about how the beings within the society felt, or about social status and evaluation. We made this choice because we did not want participants own views to be unduly affected by considerations of what others might think.

We had anticipated that participants' personal self-reported feelings might vary in the same way as their inferences about other beings' attitudes. However, we found that participants' own favorability evaluations of the victim and victim's group did not substantially differ by condition.<sup>52</sup> Personal attitudes are sometimes highly correlated with estimates of others' attitudes, but it is possible that they change less in response to hypothetical information when participants are not personally invested.<sup>53</sup> In this case, participants imagined that they were total outsiders to the society in question.

## 2. Other results

Finally, although our theory is not focused how the behavior in question (gomping) is perceived, or how the perpetrator and its group (Fendle X and Fendles in general) are perceived, we also tested whether they were viewed differently based on legal regime. Participants perceived gomping to be more moral and acceptable if it was legal than if it was illegal.<sup>54</sup> Also, when the action was illegal and the perpetrator was

<sup>48</sup> Legal:  $M = 48.90$ ,  $SD = 19.01$ ; illegal:  $M = 61.56$ ,  $SD = 17.14$ ;  $t(122) = 3.90$ ,  $p < .001$ ,  $d = 0.70$ .

<sup>49</sup> Legal:  $M = 34.46$ ,  $SD = 17.42$ ; illegal:  $M = 49.53$ ,  $SD = 22.81$ ;  $t(122) = 4.11$ ,  $p < .001$ ,  $d = 0.74$ .

<sup>50</sup> Legal:  $M = 49.82$ ,  $SD = 19.13$ ; illegal:  $M = 59.27$ ,  $SD = 19.77$ ;  $t(122) = 2.70$ ,  $p = .008$ ,  $d = 0.49$ .

<sup>51</sup> Legal:  $M = 35.23$ ,  $SD = 19.72$ ; illegal:  $M = 52.01$ ,  $SD = 23.37$ ;  $t(122) = 4.31$ ,  $p < .001$ ,  $d = 0.78$ .

<sup>52</sup> Evaluation of victim, legal:  $M = 64.52$ ,  $SD = 14.65$ ; illegal:  $M = 65.83$ ,  $SD = 16.15$ ;  $t(122) = 0.47$ ,  $p = .64$ ,  $d = 0.09$ . Evaluation of victim's group, legal:  $M = 64.05$ ,  $SD = 14.34$ ; illegal:  $M = 66.20$ ,  $SD = 17.67$ ;  $t(122) = 0.74$ ,  $p = .46$ ,  $d = 0.13$ .

<sup>53</sup> Unpublished data, Burke Perry, Dovidio, & LaFrance (on file with author).

<sup>54</sup> Legal:  $M = 29.16$ ,  $SD = 20.99$ ; illegal:  $M = 21.63$ ,  $SD = 19.59$ ;  $t(122) = 2.07$ ,  $p = .041$ .

punished for doing it to the victim, participants believed that the perpetrator was more socially devalued and lower in status compared to when the action was legal.<sup>55</sup> Similarly, participants judged the perpetrator's social group to be more socially devalued and lower in status when the action was illegal than when it was legal.<sup>56</sup> Participants also reported their own favorable or unfavorable evaluations of the perpetrator and perpetrator's group, which did not substantially differ by condition.<sup>57</sup>

### C. Discussion

The expressive theory of law posits that “law changes behavior by signaling the underlying attitudes of the community or society.”<sup>58</sup> Because law's expressive function relies on its ability to send a message about the relative status of groups, Study 1 tested the hypothesis that participants would draw inferences about the social status of a group based on the society's decision to prohibit (or not) unwelcome actions taken against members of that group. We did not find evidence that respondents themselves alter their feelings toward the victim or its social group based on legal regime, but we found evidence that they use the law to infer the attitudes of others. Results indicate that participants infer that the victim's community holds it and its group in lower regard when the law tolerates the harmful behavior, as compared to when the law prohibits such behavior. Thus, Study 1 provides evidence for the signaling function of law, even when law is divorced from a familiar social context.

## III. Study 2

In Study 2, we move from the decontextualized fictional society to the real world. We present U.S.-based participants with information about the law governing their own society, and probe their attitudes toward members of a familiar subgroup.

### A. Method

We recruited 250 participants<sup>59</sup> on Amazon Mechanical Turk. Participants were presented with a scenario in which a job applicant brought an employment discrimination suit against a company for refusing to hire her based on her history of depression. In the key manipulation, participants were told either that the judge ruled in the applicant's

<sup>55</sup> Estimate of how members of society evaluate the perpetrator, legal:  $M = 48.65$ ,  $SD = 21.51$ ; illegal:  $M = 33.98$ ,  $SD = 18.79$ ;  $t(122) = -4.05$ ,  $p < .001$ ,  $d = 0.73$ . Perceived social status of the perpetrator, legal:  $M = 64.06$ ,  $SD = 17.31$ ; illegal:  $M = 45.97$ ,  $SD = 21.58$ ;  $t(122) = -5.13$ ,  $p < .001$ ,  $d = 0.92$ .

<sup>56</sup> Estimate of how members of society evaluate the perpetrator's group, legal:  $M = 52.00$ ,  $SD = 21.98$ ; illegal:  $M = 43.75$ ,  $SD = 21.29$ ;  $t(122) = -2.12$ ,  $p = .036$ ,  $d = 0.38$ . Perceived social status of the perpetrator's group, legal:  $M = 68.69$ ,  $SD = 17.08$ ; illegal:  $M = 52.37$ ,  $SD = 22.03$ ;  $t(122) = -4.59$ ,  $p < .001$ ,  $d = 0.83$ .

<sup>57</sup> Evaluation of perpetrator, legal:  $M = 29.73$ ,  $SD = 19.55$ ; illegal:  $M = 26.02$ ,  $SD = 19.94$ ;  $t(122) = -1.05$ ,  $p = .30$ ,  $d = 0.19$ . Evaluation of perpetrator's group, legal:  $M = 37.67$ ,  $SD = 17.59$ ; illegal:  $M = 39.09$ ,  $SD = 22.37$ ;  $t(122) = 0.39$ ,  $p = .69$ ,  $d = 0.07$ .

<sup>58</sup> McAdams, *supra* note 12, at 340.

<sup>59</sup> 252 completed the survey, and we excluded 1 who responded “yes” to the question, “Were any of your answers in this survey intended as jokes?” and 1 who reported their birth year differently on the consent page and the demographics page, raising the possibility that they may have lied about their age. The resulting sample included 120 women, 127 men, 3 unspecified; ages ranged from 20 to 72,  $M = 39.14$ ,  $SD = 12.98$ ,  $Mdn = 36$ .

favor, determining that it is illegal to discriminate based on mental health history (Illegal Condition), or that the judge ruled in the employer's favor, ruling that it is legal to discriminate on the basis of mental health history (Legal Condition):

Amy recently applied for an office job and was invited for an interview. While going over Amy's experiences in college, the interviewer asked her why she graduated later than expected. Amy explained that she missed a semester of college for mental health reasons, and that she now sees a therapist and takes medication to manage her depression.

The company declined to hire her, citing her history of mental illness as the main reason. Amy sued the company for discrimination. The judge ruled in **Amy's [the company's]** favor, explaining that it is currently **legal [illegal]** in the United States to refuse to hire someone on the basis of their mental illness history.<sup>60</sup>

After reading the scenario, participants responded to a series of items capturing their reactions to the scenario and the legal issues it raised, presented in a random order with 7-point Likert scales ranging from "strongly disagree" to "strongly agree."<sup>61</sup> Of primary interest was participants' own reported degree of support for discrimination on the basis of mental health history.<sup>62</sup> We also computed the degree to which participants believed that other Americans endorse discrimination on the basis of a history of mental illness.<sup>63</sup>

<sup>60</sup> The stimuli that participants viewed did not use boldface font, which is used here to make clear the difference between conditions.

<sup>61</sup> 4 items, Cronbach's  $\alpha = .80$ . Additionally, there were three items at this stage of the survey that were not relevant to our hypotheses, "It is currently legal in the United States to refuse to hire someone on the basis of their mental illness history," "It is currently illegal in the United States to refuse to hire someone on the basis of their mental illness history," and "Many Americans disagree about whether it should be legal to refuse to hire someone on the basis of their mental illness history." We included the first two as attention checks and the latter as an exploratory measure of perceived controversy.

<sup>62</sup> 13 items, Cronbach's  $\alpha = .96$ . All items were scored such that higher numbers indicated endorsement of discrimination. They items were:

"It should be legal in the United States to refuse to hire someone on the basis of their mental illness history";  
 "It should be illegal in the United States to refuse to hire someone on the basis of their mental illness history";  
 "In the scenario I read about, the company should be punished for discriminating against Amy";  
 "In the scenario I read about, I support the company's decision not to hire Amy";  
 "In the scenario I read about, I oppose the company's decision not to hire Amy";  
 "In the scenario I read about, the judge should have ruled in favor of the company";  
 "In the scenario I read about, the judge should have ruled in favor of Amy";  
 "Companies should routinely refuse to hire people with a history of mental illness";  
 "Companies should never refuse to hire people with a history of mental illness";  
 "I would vote for a law making it illegal in the United States to refuse to hire someone on the basis of their mental illness history";  
 "I would vote for a law making it legal in the United States to refuse to hire someone on the basis of their mental illness history";  
 "I believe that it is moral to refuse to hire someone on the basis of their mental illness history";  
 "I believe that it is wrong to refuse to hire someone on the basis of their mental illness history."

<sup>63</sup> All items were scored so that higher numbers indicated perceived endorsement of discrimination. The items were:

Next, we measured participants' own attitudes toward Amy's social group: people with a history of mental illness. We presented participants with three "feeling thermometers"<sup>64</sup>—0-100 sliding scales that ranged from cold to warm, unfavorable to favorable, and negative to positive.<sup>65</sup> We also asked a set of questions meant to capture participants' desired social distance from individuals with a history of mental illness:

- "I could become very good friends with someone with a history of mental illness"
- "I sometimes avoid people with a history of mental illness"
- "I would not want to have someone with a history of mental illness marry into my family."

Participants also responded to the same feeling thermometer items and desired social distance items with regard to people with "a history of depression." Taken together, these items permitted us to measure valenced reactions toward (a) people with mental illness generally and (b) people with depression specifically.<sup>66</sup>

Next, participants completed three scales: the Right Wing Authoritarianism (RWA) scale,<sup>67</sup> which measures adherence to established authorities and antipathy toward those who violate social norms; the Need for Cognition (NFC) scale<sup>68</sup>, which measures a robust motivation to put effort into cognitive activity; and a 14-item scale measuring perceptions of the legitimacy of courts.<sup>69</sup> RWA and NFC are two standardized measures drawn from the psychological literature on individual differences in social attitudes and attitude change. The legitimacy scale measures were based on Tom Tyler

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"Most Americans believe that it should be legal to refuse to hire someone on the basis of their mental illness history";

"Most Americans believe that it should be illegal to refuse to hire someone on the basis of their mental illness history";

"Most Americans believe that it is moral to refuse to hire someone on the basis of their mental illness history";

"Most Americans believe that it is wrong to refuse to hire someone on the basis of their mental illness history."

<sup>64</sup> See *supra* note 44.

<sup>65</sup> 3 items, Cronbach's  $\alpha = .91$ . Participants filled out these three scales in response to each of the following questions:

- "In general, how do you feel about Amy (the job applicant you read about)?"
- "In general, how do you feel about people with a history of depression?"
- "In general, how do you feel about people with a history of mental illness?"

<sup>66</sup> We computed a single index of participants' evaluation of people with mental illness by standardizing and averaging the three feeling thermometers and the three 1-7 Likert items about social distance: 6 items, Cronbach's  $\alpha = .90$ . These items capture the same theoretical idea, a general friendliness or antipathy toward people with mental illness. The average of the three 1-7 Likert items correlated with the average of the three 0-100 items,  $r = .61$ . We did the same for the measures capturing participants' evaluation of people with depression specifically: 6 items, Cronbach's  $\alpha = .89$ . The average of the three 1-7 Likert items correlated with the average of the three 0-100 items,  $r = .58$ .

<sup>67</sup> BOB ALTEMEYER, RIGHT-WING AUTHORITARIANISM (1981); BOB ALTEMEYER, THE AUTHORITARIANS (2006), <https://theauthoritarians.org>.

<sup>68</sup> John T. Cacioppo & Richard E. Petty, *The Need for Cognition*, 42 J. PERSONALITY & SOC. PSYCH. 116 (1982); John T. Cacioppo, Richard E. Petty & Chuan Feng Kao, *The Efficient Assessment of Need for Cognition*, 48 J. PERSONALITY ASSESSMENT 306 (1984).

<sup>69</sup> Cronbach's  $\alpha = .89$ . See Appendix A for all scale items. The manipulation of the legality of discrimination did not have a significant effect on court legitimacy,  $t(238) = 1.03, p = 0.30, d = 0.13$ . Legal condition:  $M = 4.09, SD = 0.97$ ; illegal condition:  $M = 4.22, SD = 0.99$ .

and Jeffrey Fagan's scale measuring perceptions of the legitimacy of the police.<sup>70</sup> We adapted their scale so that it would capture participants' feelings of obligation, trust, and confidence in the courts. For example:

- "You should accept the decisions made by judges, even if you think they are wrong."
- "Sometimes you have to bend the law for things to come out right." (reverse-scored)
- "The law does not protect my interests." (reverse-scored)
- "Judges care about the well-being of everyone they deal with."<sup>71</sup>

All three scales were included as exploratory measures; we focus on court legitimacy here because it was discovered to be an important moderator. In the next study, we provide a confirmatory test that court legitimacy moderates the effect of legal regime on participant attitudes.

Last, participants completed a demographic questionnaire reporting their age, gender, race/ethnicity, religious affiliation, educational attainment, political views, and own history of depression and other mental health conditions.

## B. Results

### 1. Primary results

Does learning that discrimination on the basis of mental health history is illegal (vs. legal) affect participants' attitudes toward people with a history of depression? For those who perceive the court system as high in legitimacy, the answer is yes. See Figure 2(A) "Evaluation of People with Depression." Participants who viewed the court system as highly legitimate evaluated people with depression more negatively when discrimination was presented as legal (vs. illegal).<sup>72</sup> In contrast, participants who viewed the court system as low in legitimacy evaluated people with depression most *favorably* when discrimination against them was portrayed as legal.<sup>73</sup>

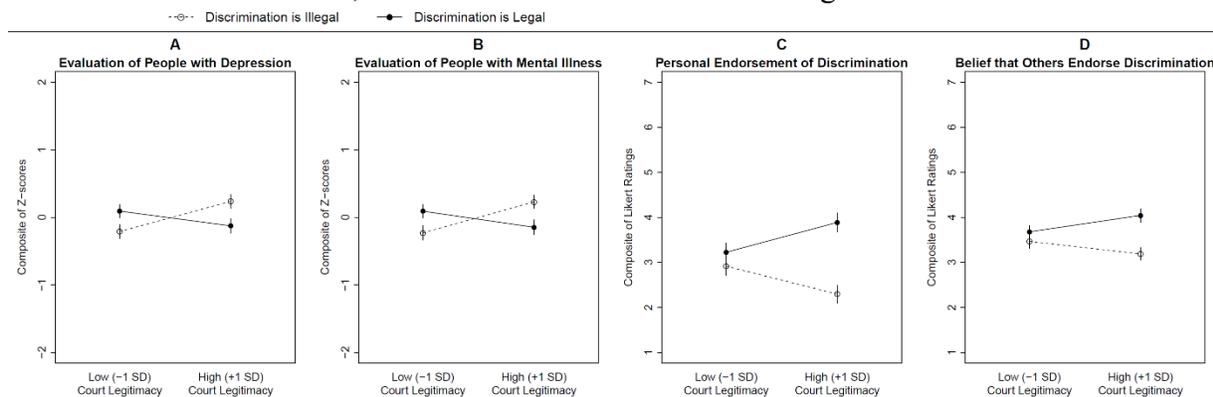
<sup>70</sup> Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?* 6 OHIO ST. J. CRIM. L. 231, 270-71 (2008).

<sup>71</sup> The entire 14-item scale is reproduced in Appendix A.

<sup>72</sup> We fit linear regression models with terms for the legality manipulation, court legitimacy, and their interaction. At one standard deviation above the mean of court legitimacy, evaluation of people with depression was more negative in the legal condition than in the illegal condition,  $b = -0.36$ ,  $SE = 0.15$ ,  $p = .013$ ,  $\beta = -0.46$ . In results of this form, the letter b denotes the difference between the conditions in the original units of the response scale, and  $\beta$  denotes the same difference in standard deviations of the response scale (i.e., a standardized slope computed by standardizing the response variable and not the condition indicator variable).

<sup>73</sup> At one standard deviation below the mean of court legitimacy,  $b = 0.30$ ,  $SE = 0.14$ ,  $p = .035$ ,  $\beta = 0.39$ . The interaction between condition and court legitimacy was significant,  $b = -0.33$ ,  $SE = 0.10$ ,  $p = .001$ ,  $\beta = -0.42$ .

**Figure 2.** Participants high in court legitimacy evaluate people with depression and mental illness more positively, endorse discrimination less, and believe that others endorse discrimination less, when told that discrimination is illegal.



The same pattern of results held true when it came to participants' evaluations of people with mental health conditions generally. See Figure 2(B) "Evaluation of People with Mental Illness." Participants who viewed the court system as highly legitimate evaluated people with mental health conditions more negatively when discrimination was presented as legal than when it was presented as illegal.<sup>74</sup> In contrast, participants who viewed the court system as less legitimate evaluated people with mental health conditions more favorably in the condition where discrimination was presented as illegal.<sup>75</sup>

Participants also reported their views regarding discrimination on the basis of mental health status (e.g., rating their agreement with statements such as "Companies should never refuse to hire people with a history of mental illness."). See Figure 2(C) "Personal Endorsement of Discrimination." Again, for participants who viewed the court system as high in legitimacy, presenting discrimination as illegal (vs. legal) led them to rate discrimination as less desirable and less morally acceptable.<sup>76</sup> For participants who viewed the court system as low in legitimacy, the legality of discrimination had less of an effect on their judgment of its acceptability.<sup>77</sup>

Finally, participants also indicated the extent to which they believed that *other people* support discrimination (e.g., "Most Americans believe that it should be legal to refuse to hire someone on the basis of their mental illness history."). See Figure 2(D) "Belief that Others Endorse Discrimination." For participants who viewed the court system as highly legitimate, presenting discrimination as legal led them to rate it as more

<sup>74</sup> At one standard deviation above the mean of court legitimacy, evaluation of people with mental illnesses was more negative in the legal condition than in the illegal condition,  $b = -0.38$ ,  $SE = 0.15$ ,  $p = .013$ ,  $\beta = -0.46$ .

<sup>75</sup> At one standard deviation below the mean of court legitimacy,  $b = 0.32$ ,  $SE = 0.15$ ,  $p = .030$ ,  $\beta = 0.39$ . The interaction between condition and court legitimacy was significant,  $b = -0.35$ ,  $SE = 0.11$ ,  $p = .001$ ,  $\beta = -0.43$ .

<sup>76</sup> At one standard deviation above the mean of court legitimacy, support for discrimination was higher in the legal condition than the illegal condition,  $b = 1.59$ ,  $SE = 0.29$ ,  $p < .001$ ,  $\beta = 0.98$ .

<sup>77</sup> At one standard deviation below the mean of court legitimacy, support for discrimination did not differ significantly by condition,  $b = 0.31$ ,  $SE = 0.28$ ,  $p = .28$ ,  $\beta = 0.19$ . The interaction between condition and court legitimacy was significant,  $b = 0.64$ ,  $SE = 0.20$ ,  $p = .002$ ,  $\beta = 0.40$ .

popular compared to presenting it as illegal.<sup>78</sup> For participants who viewed the court system as less legitimate, the legality of discrimination had less of an effect on their judgment of its popularity.<sup>79</sup>

## 2. Other results

Although it was not central to our hypotheses, we measured participants' evaluation of Amy, the individual target in the scenario. Participants one standard deviation below the mean of court legitimacy reported more favorable evaluations of Amy when she lost her case (discrimination was legal) than when she won her case (discrimination was illegal). Participants one standard deviation above the mean of court legitimacy were less affected by the manipulation.<sup>80</sup> This finding is consistent with the finding that participants who are low in court legitimacy react to the lack of legal prohibition against mental health discrimination by elevating those targeted by such discrimination (Figure 2(A) and 2(B)).

## C. Discussion

Study 2 showed that perceptions of court legitimacy are an important moderating factor in the expressive effect of the law. The legal regime governing employment discrimination does seem to affect people's attitudes toward social groups, but only among those who view the courts as legitimate.

Due to the study procedures, participants always reported their views of court legitimacy after they rated their perceptions of people with mental health conditions. With this design, it is unclear whether perceptions of legitimacy were affected by carry-over effects from the discrimination scenario or the survey items measuring attitudes toward the target and her group. Thus, in Study 3, we randomly varied the order of items such that some participants reported their perceptions of court legitimacy before the discrimination scenario, while other participants reported their perceptions of court legitimacy after the main attitude measures.

In addition, we pre-registered the hypothesis there would be an interaction between perceptions of court legitimacy and the main manipulation portraying discrimination as legal vs. illegal. Because we had approached the court legitimacy construct as an exploratory measure in Study 2, it was important in Study 3 to replicate the finding to demonstrate its reliability (i.e., conduct a confirmatory analysis).

<sup>78</sup> At one standard deviation above the mean of court legitimacy, estimates of "most people's" support for discrimination were higher in the legal condition than the illegal condition,  $b = 0.85$ ,  $SE = 0.20$ ,  $p < .001$ ,  $\beta = 0.75$ .

<sup>79</sup> At one standard deviation below the mean of court legitimacy, estimates of "most people's" support for discrimination did not differ significantly by condition,  $b = 0.21$ ,  $SE = 0.21$ ,  $p = .30$ ,  $\beta = 0.19$ . The interaction between condition and court legitimacy was significant,  $b = 0.32$ ,  $SE = 0.14$ ,  $p = .027$ ,  $\beta = 0.28$ .

<sup>80</sup> At one standard deviation below the mean of court legitimacy:  $b = 9.05$ ,  $SE = 3.43$ ,  $p = .009$ ,  $\beta = 0.48$ . At one standard deviation above the mean:  $b = -4.48$ ,  $SE = 3.40$ ,  $p = .19$ ,  $\beta = -0.24$ . The interaction was significant,  $b = -6.76$ ,  $SE = 2.42$ ,  $p = .006$ ,  $\beta = -0.36$ .

## IV. Study 3

Study 3 follows the same procedures as Study 2, with a few key changes. In addition to varying the order of the court legitimacy items vs. the main dependent measures, we also included a standardized scale measuring social desirability. This was done to address the concern that in the previous study, court legitimacy might have served as a proxy for a socially desirable response tendency. Specifically, participants who were motivated to align their responses with popular opinion may have interpreted the court scenario as a signal of that opinion and reported their own attitudes accordingly. These participants might also have believed that it is popular or desirable to say that the court system is legitimate. This would be a less theoretically interesting explanation for moderating the role of court legitimacy observed in Study 2.

If socially desirable responding were the primary reason court legitimacy moderated the effect of the manipulation, however, then a more direct measure of a general socially desirable response pattern should moderate the effect of the manipulation in the same way. We included such a measure in Study 3. The Balanced Inventory of Desirable Responding Short Form captures a tendency to purposefully respond to surveys to present oneself favorably and a related tendency to respond to surveys in a way that reflects a genuine positively-biased impression of the self.<sup>81</sup> We predicted that these general patterns of socially desirable responding would *not* substantially moderate the effect of the manipulation.

### A. Method

We recruited 483 participants<sup>82</sup> on Amazon Mechanical Turk. As in Study 2, participants read a scenario about a person with a history of depression named “Amy” who sued an organization for employment discrimination. In one condition, she won her suit because, according to the judge, discrimination is illegal; in the other condition, she lost because discrimination is legal.

Participants responded to the same items about the scenario, capturing personal endorsement of discrimination,<sup>83</sup> the belief that others endorse discrimination,<sup>84</sup> evaluation of Amy,<sup>85</sup> evaluation of people with depression,<sup>86</sup> and evaluation of people with mental illness.<sup>87</sup>

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<sup>81</sup> Claire M. Hart, et al., *The Balanced Inventory of Desirable Responding Short Form (BIDR-16)*, 5 SAGE OPEN (2015), available at <https://doi.org/10.1177/2158244015621113> (Example item: “I am a completely rational person.”).

<sup>82</sup> 504 completed the survey. We excluded 10 who responded “yes” to the question, “Were any of your answers in this survey intended as jokes?” and 1 who declined to respond to that question. We excluded 8 who reported their birth year differently on the consent page and the demographics page, raising the possibility that they may have lied about their age, and 2 who declined to respond to the second instance of that question. The resulting sample included 193 women, 288 men, 2 unspecified; ages ranged from 19 to 78,  $M = 37.57$ ,  $SD = 11.41$ ,  $Mdn = 34$ .

<sup>83</sup> 13 items, Cronbach’s  $\alpha = .96$ .

<sup>84</sup> 4 items, Cronbach’s  $\alpha = .82$ .

<sup>85</sup> 3 items, Cronbach’s  $\alpha = .95$ .

<sup>86</sup> 6 items, Cronbach’s  $\alpha = .90$ .

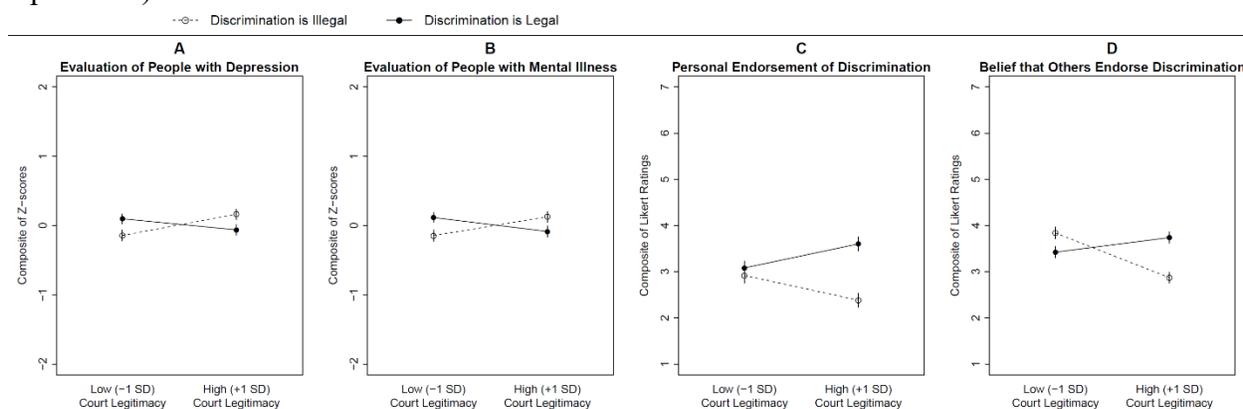
<sup>87</sup> 6 items, Cronbach’s  $\alpha = .92$ .

Participants also responded to the same court legitimacy scale as before.<sup>88</sup> In Study 2, this measure appeared at the end of the survey, but in the current study it was randomly assigned to appear at the beginning or the end.<sup>89</sup>

We added one new measure to the current study to capture socially desirable response tendencies among participants—the Balanced Inventory of Desirable Responding Short Form (BIDR-16; 16 items, Cronbach’s  $\alpha = .87$ ).<sup>90</sup> Participants who saw court legitimacy at the beginning of the study saw social desirability immediately after court legitimacy; participants who saw court legitimacy at the end saw social desirability immediately before.

## B. Results

**Figure 3.** Participants high in court legitimacy evaluate people with depression and mental illness more positively, endorse discrimination less, and believe that others endorse discrimination less, when told that discrimination is illegal (preregistered replication).



### 1. Primary outcomes

Our primary hypothesis concerned the evaluation of people with a history of depression as a group (see Figure 3(A), “Evaluation of People with Depression”). Consistent with the previous study and our preregistered hypothesis, participants who viewed the court system as highly legitimate evaluated people with depression more negatively when discrimination was presented as legal (vs. illegal).<sup>91</sup> In contrast,

<sup>88</sup> 14 items, Cronbach’s  $\alpha = .91$ .

<sup>89</sup> The mean level of court legitimacy was not significantly different depending on whether it was measured before ( $M = 4.49$ ,  $SD = 1.07$ ) or after ( $M = 4.51$ ,  $SD = 1.17$ ) the court scenario,  $t(466) = 0.16$ ,  $p = .87$ ,  $d = 0.01$ . Also, the timing of the court legitimacy measure did not significantly moderate the results reported elsewhere.

<sup>90</sup> Hart et al., *supra* note 81.

<sup>91</sup> We fit linear regression models with terms for the legality manipulation, court legitimacy, and their interaction. At one standard deviation above the mean of court legitimacy, evaluation of people with depression was more negative in the legal condition than in the illegal condition,  $b = -0.23$ ,  $SE = 0.11$ ,  $p = .035$ ,  $\beta = -0.28$ .

participants who viewed the court system as low in legitimacy evaluated people with depression most favorably when discrimination was portrayed as legal.<sup>92</sup>

Participants also reported their evaluations of people with mental illnesses generally (see Figure 3(B), “Evaluation of People with Mental Illness”). Participants who viewed the court system as highly legitimate evaluated people with mental illnesses more negatively when discrimination was presented as legal than when it was presented as illegal, although this discrepancy did not reach statistical significance.<sup>93</sup> In contrast, participants who viewed the court system as less legitimate evaluated people with mental illnesses more favorably in the condition where discrimination was presented as illegal.<sup>94</sup>

## 2. Secondary outcomes

Our preregistration also indicated that we would examine, as a matter of secondary interest, participants’ views regarding the acceptability of discrimination on the basis of mental health status (see Figure 3(C), “Personal Endorsement of Discrimination”). For participants who viewed the court system as highly legitimate, presenting discrimination as illegal (vs. legal) led them to rate discrimination as less desirable and less morally acceptable.<sup>95</sup> For participants who viewed the court system as low in legitimacy, the legality of discrimination had less of an effect on their judgment of its acceptability.<sup>96</sup>

Finally, participants also indicated the extent to which they believed that *other people* support discrimination (see Figure 3(D), “Belief that Others Endorse Discrimination”). For participants who viewed the court system as highly legitimate, presenting discrimination as legal led them to rate discrimination as more popular compared to presenting it as illegal.<sup>97</sup> For participants who viewed the court system as less legitimate, the legality of discrimination had the opposite effect on their judgment of its popularity.<sup>98</sup>

## 3. Other results

<sup>92</sup> At one standard deviation below the mean of court legitimacy,  $b = 0.24$ ,  $SE = 0.11$ ,  $p = .026$ ,  $\beta = 0.29$ . The interaction between condition and court legitimacy was significant,  $b = -0.23$ ,  $SE = 0.08$ ,  $p = .002$ ,  $\beta = -0.28$ .

<sup>93</sup> At one standard deviation above the mean of court legitimacy, evaluation of people with mental illnesses was more negative in the legal condition than in the illegal condition,  $b = -0.21$ ,  $SE = 0.11$ ,  $p = .059$ ,  $\beta = -0.25$ .

<sup>94</sup> At one standard deviation below the mean of court legitimacy,  $b = 0.26$ ,  $SE = 0.11$ ,  $p = .020$ ,  $\beta = 0.31$ . The interaction between condition and court legitimacy was significant,  $b = -0.24$ ,  $SE = 0.08$ ,  $p = .003$ ,  $\beta = -0.28$ .

<sup>95</sup> At one standard deviation above the mean of court legitimacy, support for discrimination was higher in the legal condition than the illegal condition,  $b = 1.22$ ,  $SE = 0.21$ ,  $p < .001$ ,  $\beta = 0.73$ .

<sup>96</sup> At one standard deviation below the mean of court legitimacy, support for discrimination did not differ significantly by condition,  $b = 0.16$ ,  $SE = 0.22$ ,  $p = .45$ ,  $\beta = 0.10$ . The interaction between condition and court legitimacy was significant,  $b = 0.53$ ,  $SE = 0.15$ ,  $p < .001$ ,  $\beta = 0.32$ .

<sup>97</sup> At one standard deviation above the mean of court legitimacy, estimates of “most people’s” support for discrimination were higher in the legal condition than the illegal condition,  $b = 0.87$ ,  $SE = 0.17$ ,  $p < .001$ ,  $\beta = 0.64$ .

<sup>98</sup> At one standard deviation below the mean of court legitimacy, estimates of “most people’s” support for discrimination were lower in the legal condition than the illegal condition,  $b = -0.42$ ,  $SE = 0.17$ ,  $p = .016$ ,  $\beta = -0.31$ . The interaction between condition and court legitimacy was significant,  $b = 0.64$ ,  $SE = 0.12$ ,  $p < .001$ ,  $\beta = 0.48$ .

Again, we measured participants' evaluation of Amy, although perceptions of the individual victim were not central to our hypotheses. Participants one standard deviation below the mean of court legitimacy reported more favorable/sympathetic evaluations of Amy when she lost her case (discrimination was legal) than when she won her case (discrimination was illegal), although this discrepancy did not reach statistical significance. Participants one standard deviation above the mean of court legitimacy reported less favorable evaluations of Amy when she lost her case than when she won.<sup>99</sup>

We measured participants' propensity to respond in a socially desirable manner in order to address the possibility that our court legitimacy effects could be driven by social desirability. In our preregistration, we indicated that we would test this possibility by estimating (a) the correlation between social desirability and court legitimacy and (b) the interaction between condition and social desirability predicting the other variables mentioned above. Court legitimacy was significantly correlated with a socially desirable response tendency,<sup>100</sup> but social desirability did not significantly moderate the effect of the experimental manipulation in the same way that court legitimacy did.<sup>101</sup> These results suggest that court legitimacy was not merely serving as a proxy for socially desirable responding in our main analysis.

### C. Discussion

Our previous study supported the hypothesis that beliefs about the legality of discrimination against real-world social groups can contribute to prejudice against those groups among a subset of people, and provided preliminary evidence that the general sense that courts are legitimate may make people susceptible to this psychological effect of law. Study 3 provided additional evidence for the same claim, including mitigating key limitations of Study 2. First, Study 3's predictions about the moderating role of court legitimacy were preregistered, making the reported tests confirmatory. The evidence from Study 3 therefore makes it less plausible that the observed role of court legitimacy is the result of random noise. Second, Study 3 demonstrated that mere tendency to give socially desirable response does not explain the observed patterns, making it less plausible that the observed role of court legitimacy is simply a manifestation of social desirability concerns. Also, because the timing of the court legitimacy measure in the experiment did not make a substantial difference in the results, Study 3 helps rule out the

<sup>99</sup> At one standard deviation below the mean of court legitimacy:  $b = 5.24$ ,  $SE = 2.86$ ,  $p = .067$ ,  $\beta = 0.24$ . At one standard deviation above the mean:  $b = -6.35$ ,  $SE = 2.84$ ,  $p = .026$ ,  $\beta = -0.29$ . The interaction was significant,  $b = -5.79$ ,  $SE = 2.02$ ,  $p = .004$ ,  $\beta = -0.26$ .

<sup>100</sup>  $r(454) = .24$ ,  $p < .001$

<sup>101</sup> The interaction between the legality manipulation and social desirability was not a significant predictor of evaluation of people with depression,  $b = -0.12$ ,  $SE = 0.08$ ,  $p = .12$ ,  $\beta = -0.14$ , evaluation of people with mental illness,  $b = -0.09$ ,  $SE = 0.08$ ,  $p = .25$ ,  $\beta = -0.11$ , or endorsement of discrimination,  $b = -0.04$ ,  $SE = 0.15$ ,  $p = .80$ ,  $\beta = -0.02$ . With regard to the belief that most people endorse discrimination, there was a significant interaction between condition and social desirability, but in the opposite direction of the court legitimacy interaction discussed earlier,  $b = -0.28$ ,  $SE = 0.12$ ,  $p = .022$ ,  $\beta = -0.21$ . Participants low in socially desirable response tendency reported believing that other people support discrimination more when it was legal than when it was not legal ( $b = 0.53$ ,  $SE = 0.17$ ,  $p = .003$ ,  $\beta = 0.39$ ), but participants high in socially desirable response tendency were not affected as much by the manipulation ( $b = -0.04$ ,  $SE = 0.18$ ,  $p = .82$ ,  $\beta = -0.03$ ).

possibility that people used the discrimination case as their informational basis for deciding the legitimacy of the courts.

Thus, we argue that court legitimacy is meaningfully tied to the inferences people make about the relative value of social groups based on their legal protection. We set out to study the possibility that the legality of discrimination could cause changes in participants' attitudes toward people with a history of depression, and it seems that such persuasive effects are possible—at least among people who ordinarily view the court system as high in legitimacy.

## V. General Discussion

The foregoing studies reveal that when people who generally trust the courts are told that it is illegal to refuse to hire a person on the basis of her history of clinical depression, they exhibit less prejudicial attitudes toward individuals with depression, and mental health conditions more broadly, as compared to when they are told such discrimination is legal. These respondents not only believe that discrimination on the basis of mental health is more unfair and unlawful; they also report feeling more warmth toward individuals with mental illness and more willingness to socially affiliate with them. Conversely, if these individuals are told that discrimination is legal, they express more negativity in their interpersonal feelings toward people with mental health conditions. Thus, these studies highlight the important role that law can play in changing interpersonal prejudice, at least among those who imbue courts with legitimacy. For individuals who view the courts as low in legitimacy, learning about the outcome of a court case shows no such effect.

### A. Implications

We see three main implications of these findings. First, they bear on the question of whether law has the power to transform society beyond merely deterring prohibited conduct, which has been the subject of extensive debate. For example, in Congressional hearings leading up to the passage of the Civil Rights Acts of 1954, New Jersey Senator Harrison A. Williams, Jr. testified (quoting Dr. Martin Luther King, Jr.) that “Morality cannot be legislated, but behavior can be regulated. The law may not change the heart, but it can restrain the heartless.” Other testimony expressed a similar sentiment: that antidiscrimination laws produce changes in society because they deter discriminatory behavior. As New Jersey Senator Harrison A. Williams, Jr. stated in the hearings on the public accommodations bill, “We have seen this in so many areas where we know we can’t change the heart of man, the mind of man, but we can regulate his behavior.”<sup>102</sup>

Certainly, proponents of the Civil Rights Act *hoped* that behavioral changes motivated by the threat of sanctions would eventually become internalized as attitude change. Walter Reuther, president of the United Automobile Workers, expressed the hope that civil rights legislation may one day become unnecessary because equality

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<sup>102</sup> *Civil Rights—Public Accommodations: Hearing on S. 1732 Before the S. Comm. On Commerce*, 88th Cong. 652 (1963) (statement of Sen. Williams) (as cited in McClain, *supra* note 6, at 905).

norms will have become so pervasive that nobody would think to discriminate in the first place.<sup>103</sup> This sentiment echoes Allport's position: law alters visible behavior—that is, it changes descriptive norms—and witnessing the new descriptive norms, in turn, affects attitudes. The process of internalization would be long and slow, he posits, having “an eventual effect upon inner habits of thought and feeling.”<sup>104</sup>

What the current research suggests is that there may be a more direct link—at least for some people. Those who view courts as legitimate alter their social attitudes based on the law itself. Thus, even if the material sanctions imposed by antidiscrimination laws are limited, such laws may still provide a plausible path to changing social attitudes, so long as people buy into the moral authority of law.

These findings carry several insights for advocates seeking to change societal prejudices. A common concern in setting out litigation strategy is that securing legal victories for relatively privileged members of a marginalized group will do nothing to help less privileged members. For instance, in the lead-up to the landmark marriage equality case *Obergefell v. Hodges*,<sup>105</sup> some LGBTQ+ activists argued that the movement for marriage equality primarily served the concerns of the older, whiter, more economically secure segments of the LGBTQ+ community.<sup>106</sup> For younger members and members of color, some argued, concerns about housing security, health care accessibility, hate crimes, and other manifestations of inequality loomed larger than the ability to marry.<sup>107</sup> This research raises the possibility that a legal victory in one arena (e.g., marriage) may have the effect of raising the status of LGBTQ+ people broadly, and of reducing prejudice against members of this community in other arenas. Recall that our study participants reported greater willingness to befriend and socially affiliate with members of the target group when they learned that discrimination against the group was illegal. A victory on a narrow legal issue such as marriage may be about more than marriage: it may have an expressive dimension that changes attitudes toward group members more broadly.

In a similar vein, the findings also underscore the importance of raising awareness about existing legal protections for marginalized groups. Many members of the public are unaware, for instance, that federal law views people with clinical depression as

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<sup>103</sup> *Civil Rights: Hearings on Miscellaneous Proposals Regarding the Civil Rights of Persons Within the Jurisdiction of the United States before Subcomm. N. 5 of the H. Comm. on the Judiciary*, 88th Cong. 1940 (1963) (written testimony of Walter P. Reuther, President, UAW) (as cited in McClain, *supra* note 6, at 911-12).

<sup>104</sup> ALLPORT, *supra* note 5, at 469.

<sup>105</sup> 576 U.S. 644 (2015).

<sup>106</sup> E.g., BBC News quoted activist Legba Carrefour arguing against legal recognition of same-gender marriage in 2013: “I’m not concerned about whether I can get married but whether I will die in the street at the hands of homophobes.” Tom Geoghegan, *The Gay People Against Gay Marriage*, BBC NEWS (June 11, 2013), <https://www.bbc.com/news/magazine-22758434>.

<sup>107</sup> See e.g., Jesús Gregorio Smith, *Gay Marriage and the Illusion of Equality*, RACISM REVIEW (Apr. 28, 2015), <http://www.racismreview.com/blog/2015/04/28/gay-marriage-and-illusion-of-equality> (“[E]ven if marriage equality does in fact become a reality, issues of racism, sexism, ageism, homophobia, and body shaming continue to further marginalize different groups of people in gay communities across the nation. . . . So, even if the Supreme Court overturns the state-level prohibitions on gay marriage and marriage equality does in fact become a reality across the U.S., many in the gay community will be celebrating but not everyone will be welcome at the party.”).

having a mental health disability entitling them to protection under the ADA. Our findings suggest that educating the public about even somewhat obscure extant legal protections can be expected to decrease stigma, including in areas of life not directly regulated by the legal regime in question.

A second main implication of the study findings is that when discrimination is *tolerated* by law, it can hurt members of the target group. We find that the refusal to outlaw discrimination sends a denigrating signal about the status of the victim's group and plays a causal role in lowering public regard for them. We observed this kind of denigrating signal even when participants had no other basis for prejudice against a group, as in the hypothetical world of Study 1.

This finding is concerning. Often, when judges interpret a statutory or constitutional provision, they take themselves to be offering a narrow judgment on the meaning of the text in light of precedent—not making a pronouncement about the relative value of the social groups implicated in the ruling. But members of the public might not see it that way. Our research suggests that members of the public may infer from a court decision the message that one group is superior to another—more deserving of respect, esteem, and social status. They may internalize this message themselves, if they view the courts as a legitimate moral authority.

This finding further suggests that a prevalent kind of discrimination apologetics is empirically unsound. We can again turn to the debate over legal rights for LGBTQ+ individuals as an example. A frequent argument offered by religious conservatives is that a distinction can be drawn between endorsement of discrimination and personal animus or feelings of hatred. Faith leaders often assert that one can be against equal protection for LGBTQ individuals while still feeling the utmost respect and love for them. This research calls into question whether the two can be functionally separated: Even if a conceptual distinction can be drawn between the legality of discrimination and the interpersonal treatment of members of the group, we suggest that psychologically, one affects the other.

Finally, the findings suggest that not everyone takes their moral cues from the law. This attitudinal shift was observed only among participants who were high in perceptions of court legitimacy. This finding suggests that the law's moral authority is not assured. Rather, it is incomplete and at times precarious.

For example, members of society who become cynical and disillusioned do not take cues from the law to tell them what is right.<sup>108</sup> A rich literature exists on the phenomenon of “legal cynicism,” which refers to “a cultural orientation in which the law and the agents of its enforcement, such as the police and courts, are viewed as

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<sup>108</sup> See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017); Michael D. Reisig, Jason Bratton & Marc G. Gertz, *The Construct Validity and Refinement of Process-Based Policing Measures*, 34 CRIM. JUST. & BEHAV. 1005 (2007); David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOCIO. 1190 (2011).

illegitimate, unresponsive, and ill equipped to ensure public safety.”<sup>109</sup> Negative experiences with law enforcement, for example, hamper the ability of the law to express moral norms that are internalized and heeded. Legal cynicism is often conceptualized as a component of *anomie*—“a state of normlessness in which the rules of the dominant society (and hence the legal system) are no longer binding in the community.”<sup>110</sup> While prior theorizing has emphasized the consequences of legal cynicism for public safety and trust in police, this research raises the question of whether it hinders the internalization of other kinds of legal norms, such as the norm that certain groups are entitled to equal status under the law. If law ordinarily has the authority to reduce prejudice toward stigmatized groups (or, conversely, by refusing to penalize discrimination, to engender such prejudicial attitudes), then it may have less of an effect on those who are disillusioned with its moral authority.

## B. Limitations and Future Directions

Previous research has made clear that there is robust public prejudice against people with mental illnesses, including depression, in the United States.<sup>111</sup> Despite this strong prejudice, however, it may be the case that prejudicial attitudes toward people with mental health conditions are more amenable to revision than other forms of prejudice. Indeed, one reason we chose to study mental health discrimination is that we wanted to study a form of discrimination that was relatively nonpoliticized. We hoped doing so would allow us to study more cleanly the role that law itself, apart from social movements or activism, plays in changing stigma and prejudicial attitudes. Of course, with this focus comes a significant limitation: we do not know whether the results generalize to forms of discrimination about which people’s prior views reflect strong political allegiances. Future research should test whether a similar dynamic can be observed with regard to domains that are more politicized.

In addition, the design of our studies required that we be able to randomly assign participants to learn that discrimination was legal or illegal; thus, we needed to study a domain in which participants’ beliefs about the law were malleable. As described earlier, mental health discrimination fit this requirement. One limitation of this research is that we were unable to observe whether the process we documented with mental health discrimination extends to other kinds of discrimination, such as discrimination against religious minorities, where participants’ beliefs about legality are more established and harder to manipulate. It is possible that where someone feels strongly about a certain kind of discrimination being legal or illegal, learning that the law misaligns with their view may make them more cynical toward the law, rather than causing them to change their regard for the social group in question. However, it is also possible that such entrenched views could be altered by salient coverage of high-profile antidiscrimination cases—coverage that we could not simulate realistically in a short online survey. Future research should investigate these questions.

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<sup>109</sup> Kirk & Papachristos, *supra* note 108.

<sup>110</sup> *Id.*

<sup>111</sup> See sources cited *supra* note 38.

Another limitation of this study is that we focused on explicit prejudicial attitudes as measured by self-report. We make no claim about whether implicit social cognition—including implicit bias—is affected by beliefs about the legal status of discrimination. While understanding explicit prejudice is an important aim, future studies should examine how such interventions affect nonconscious forms of bias, including implicit bias against people with mental health conditions.<sup>112</sup> In the same vein, it is an open question whether intergroup behavior, and not just attitudes, shift in response to law in the absence of sanctions. An area for future research is to see whether participants behave more warmly toward members of a social group when they believe that discrimination against that group is illegal (vs. legal).

There are several additional areas that future research should explore. One is why people differ in the extent to which they trust the courts. Research on legal socialization suggests that it is a product of prior experience with interaction with the law, such as law enforcement. For instance, people who as children attended schools that were heavily policed may have a different orientation toward the law than those who did not.<sup>113</sup> This socialization process has been shown to affect how adults come to view the law, including whether they cooperate with police investigations and whether they engage in violent crime.<sup>114</sup> To our knowledge, no research has documented any connection between prior experience with the legal system and how deferential individuals are to antidiscrimination edicts. The link between experiences with police and trust in courts (as distinct from trust in police) deserves further study, as does the link between legal socialization and propensity to break antidiscrimination laws (as distinct from committing violent crimes).

In addition, future research should examine the precise psychological mechanism through which the expressive function of law changes participants' own personal feelings of prejudice. We have identified several possibilities—courts as moral authorities, courts as indications of societal consensus—but our studies have not distinguished between them. The moderating role of court legitimacy would suggest that courts as moral authorities is a mechanism that warrants a more targeted investigation. Furthermore, future research should test whether the expressive effect of antidiscrimination law obtains when the law on the books is not enforced in practice. For instance, if it is illegal for a Fendle to gomp a Zorpie, yet Fendles are rarely punished for gomping Zorpies, what inferences do people draw about the social status of Zorpies? By the same token, if it is illegal to discriminate against people with mental health conditions, yet employers who refuse to hire people on the basis of their history of depression seldom face sanctions, will people show less prejudice toward people

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<sup>112</sup> Lindsey L. Monteith & Jeremy W. Pettit, *Implicit and Explicit Stigmatizing Attitudes and Stereotypes About Depression*, 30 J. SOC. & CLINICAL PSYCH. 484 (2011); Rüsçh, et al., *Automatically Activated Shame Reactions and Perceived Legitimacy of Discrimination: A Longitudinal Study Among People with Mental Illness*, 41 J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIATRY 60 (2010).

<sup>113</sup> E.g., TOM R. TYLER & RICK TRINKNER, *WHY CHILDREN FOLLOW RULES: LEGAL SOCIALIZATION AND THE DEVELOPMENT OF LEGITIMACY* (2013); Yael Granot & Tom R. Tyler, *Adolescent Cognition and Procedural Justice: Broadening the Impact of Research Findings on Policy and Practice*, 13 SOC. & PERSONALITY PSYCH. COMPASS e12503 (2019).

<sup>114</sup> Kirk & Papachristos, *supra* note 108.

with mental health conditions? Does law need to be enforced in order to have an expressive effect, or does law by itself provide people with a reason to shift their views?

## VI. Conclusion

There has long been a debate about whether law can change prejudicial attitudes. Since at least *Plessy v. Ferguson*'s assertion that "Legislation is powerless to eradicate racial instincts . . . ,"<sup>115</sup> skeptics have contended that extending legal protection to marginalized groups will not change the hearts and minds of the public. Social scientists who have defended the law's power to shift attitudes have generally suggested that it does so through increases in inter-group contact, or through observing descriptive norms that are gradually internalized. In this Article, we test a more direct link, examining whether the law itself sends a signal about societal values, which causes people to conform not just to the legal rule, but to the broader message of social equality between groups.

We find evidence, first, that people do draw inferences about the social status of novel groups when an unfamiliar society refuses to outlaw injurious behavior directed against group members (Study1). This finding is important, if unsurprising: many historic legal battles were as much disagreements over what messages are sent by various legal regimes, as they were disagreements over the material consequences of the regimes.<sup>116</sup> The debate over school segregation, for example, was also a debate over the *meaning* of state-sanctioned segregation; according to expressivists, "*Plessy v. Ferguson* asserted that such laws did not 'mean' black inferiority . . . ,"<sup>117</sup> while *Brown v. Board of Education* insisted it did. The Court in *Brown v. Board of Education* famously relied on empirical evidence showing that Black children had internalized degrading messages expressed by de jure segregation.<sup>118</sup> Our findings underscore that the failure to outlaw injurious behavior characteristically perpetrated by one group against another sends the message that the society does not value members of the targeted group.

We next showed that in the context of a real, contemporary form of prejudice—prejudice against people with mental health conditions—learning that the law prohibits discrimination contributes to favorable attitudes toward members of that group (Studies 2-3). Importantly, this expressive effect is observed only among individuals who view courts as high in legitimacy. Thus, we conclude that the power of antidiscrimination law to reduce societal prejudice depends on the degree to which the judicial system retains its popular legitimacy. When the judicial system is seen as legitimate, legal decisions may have psychological consequences well beyond their official scope, including facilitating or inhibiting efforts to reduce personal prejudice.

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<sup>115</sup> 163 U.S. 537 (1896).

<sup>116</sup> Sunstein, *supra* note 10; Kahan, *supra* note 10.

<sup>117</sup> Sunstein, *supra* note 10, at 2022 (citing 163 U.S. 537 (1896)).

<sup>118</sup> 347 U.S. 483 n.11 (1954) (citing KENNETH B. CLARK, *Effect of Prejudice and Discrimination on Personality Development*, in MIDCENTURY WHITE HOUSE CONF. ON CHILD. AND YOUTH (1950) (claiming, among other findings, that "[t]o separate [African-American children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.")).

## VII. Appendix A

Items capturing perceived legitimacy of the courts.

- Overall, the courts are a legitimate authority.
- You should accept the decisions made by judges, even if you think they are wrong.
- You should do what judges tell you to do even when you don't understand the reasons for their decisions.
- You should do what judges tell you to do even when you disagree with their decisions.
- You should do what judges tell you to do even when you don't like the way they treat you.
- There are times when it is OK for you to ignore what judges tell you to do.
- Sometimes you have to bend the law for things to come out right.
- The law represents the values of the people in power, rather than the values of people like me.
- People in power use the law to try to control people like me.
- The law does not protect my interests.
- I trust judges to make decisions that are good for everyone.
- People's basic rights are well protected by the courts.
- Judges care about the well-being of everyone they deal with.
- Judges are often dishonest.