

## ARTICLES

# Reducing Prejudice Through Law: Evidence from Experimental Psychology

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*Can antidiscrimination law effect changes in public attitudes toward minority groups? Could learning, for instance, that employment discrimination against people with clinical depression is legally prohibited 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 (versus 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 some 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 can license more prejudicial attitudes. Importantly, we demonstrate that individuals vary substantially in the degree to which they view courts as legitimate authorities and that these orientations systematically moderate the degree to which—and even the direction in which—prejudicial attitudes shift in response to legal rules.*

INTRODUCTION .....	1370
A. The Expressive Function of Law .....	1372
B. Previous Empirical Research .....	1376
C. The Present Research .....	1377
I. STUDY 1 .....	1380
A. Pilot Study .....	1380
B. Study 1 Method .....	1381

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1. Participants' own evaluations, measured by feeling thermometers.	1382
2. Perceptions of social evaluation.	1382
3. Perceptions of social status.	1383
4. Perceptions of the action.	1383
C. Results	1384
1. Primary results.	1384
2. Other results.	1386
D. Discussion	1387
II. STUDY 2	1387
A. Method	1389
B. Results	1395
1. Manipulation check.	1395
2. Primary results.	1395
3. Other results.	1399
C. Discussion	1399
III. STUDY 3	1400
A. Method	1401
B. Results	1403
1. Manipulation check.	1404
2. Primary outcomes.	1404
3. Secondary outcomes.	1405
4. Other results.	1406
C. Discussion	1406
IV. GENERAL DISCUSSION	1408
A. Implications	1408
B. Limitations and Future Directions	1412
CONCLUSION	1416

## INTRODUCTION

Can antidiscrimination law affect prejudicial attitudes toward minority groups? Plenty of commentary has suggested that it cannot.<sup>1</sup> The influential nineteenth-century sociologist William Graham Sumner famously argued that people must be persuaded to change their views on their own terms rather than have social mores imposed by legal edict.<sup>2</sup> In a similar vein, the Supreme Court insisted in *Plessy v. Ferguson*<sup>3</sup> that “[l]egislation is

<sup>1</sup> *E.g.*, WILLIAM GRAHAM SUMNER, *FOLKWAYS: A STUDY OF THE SOCIOLOGICAL IMPORTANCE OF USAGES, MANNERS, CUSTOMS, MORES, AND MORALS* 77 (1906).

<sup>2</sup> *See id.* (“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).

powerless to eradicate racial instincts.”<sup>4</sup> This reasoning was also invoked to justify limited federal intervention in enforcing school desegregation following *Brown v. Board of Education of Topeka*<sup>5</sup> in 1954.<sup>6</sup>

In *The Nature of Prejudice*, social psychologist Gordon Allport contested Sumner’s view that “stateways cannot change folkways.”<sup>7</sup> He argued that antidiscrimination laws *can* change attitudes and posited a specific mechanism: intergroup contact. Writing before the passage of the Civil Rights Act of 1964,<sup>8</sup> he examined state and municipal laws barring discrimination in employment and housing and argued, first, that certain forms of social contact between members of different groups—namely, contacts under conditions of equality—can diminish prejudice, and, second, that antidiscrimination legislation can engender such contact.<sup>9</sup> Around the same time, a groundbreaking study by psychologists Morton Deutsch and Mary Evans Collins found that white families that had been assigned to live in integrated public housing expressed less racist attitudes toward their Black neighbors than did white families that had been assigned to live in racially segregated buildings.<sup>10</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>11</sup> Allport’s contact hypothesis remains one of social psychology’s

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<sup>4</sup> *Id.* at 551.

<sup>5</sup> 347 U.S. 483 (1954).

<sup>6</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.

<sup>7</sup> GORDON WILLARD ALLPORT, *THE NATURE OF PREJUDICE* 469 (1954).

<sup>8</sup> Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

<sup>9</sup> See ALLPORT, *supra* note 7, at 469–70; see also Linda C. McClain, *The Civil Rights Act of 1964 and “Legislating Morality”: On Conscience, Prejudice, and Whether “Stateways” Can Change “Folkways”*, 95 B.U. L. REV. 891, 895–900 (2015); Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCH. 751, 766 (2006); THOMAS F. PETTIGREW & LINDA R. TROPP, *WHEN GROUPS MEET: THE DYNAMICS OF INTERGROUP CONTACT* 65–68 (2011).

<sup>10</sup> MORTON DEUTSCH & MARY EVANS COLLINS, *INTER-RACIAL HOUSING: A PSYCHOLOGICAL EVALUATION OF A SOCIAL EXPERIMENT* 78–79 (1951).

<sup>11</sup> ELLIOT ARONSON, *THE SOCIAL ANIMAL* 338–39 (11th ed. 2011).

most celebrated and influential insights into the problem of inter-group prejudice.<sup>12</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 behaviors beyond their instrumental consequences, through what is known as the “expressive function of law.”<sup>13</sup> Even laws that are seldom enforced can be powerful tools for communicating norms and values to the public.<sup>14</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>15</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 their peers may conform their behavior to the law without needing to observe descriptive norms directly. Professor 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

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<sup>12</sup> See, e.g., Elizabeth Levy Paluck & Donald P. Green, *Prejudice Reduction: What Works? A Review and Assessment of Research and Practice*, 60 ANN. REV. PSYCH. 339, 345–46, 355 (2009) (describing current studies in contact theory). But see Elizabeth Levy Paluck, Seth A. Green & Donald P. Green, *The Contact Hypothesis Re-evaluated*, 3 BEHAV. PUB. POL’Y 129, 129 (2019) (identifying gaps in the evidence base that must be filled “before this hypothesis can reliably guide policy”).

<sup>13</sup> See, e.g., Maggie Wittlin, Note, *Buckling Under Pressure: An Empirical Test of the Expressive Effects of Law*, 28 YALE J. REG. 419, 424 (2011).

<sup>14</sup> Examples include laws banning flag burning and hate speech. See Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2023–24 (1996); see also Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 424 (1999) (discussing the expressive force of abortion regulations, range-closure laws, and public monuments).

<sup>15</sup> See Wittlin, *supra* note 13, at 426–27, 456–58.

others think and behave.<sup>16</sup> People conform to the perceived consensus because they are motivated to gain approval from others, including strangers.<sup>17</sup>

Another way in which law's expressive power might cause a change in attitudes is through the perceived expertise and credibility of judges. According to this theory, 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 difficult factual and moral questions.<sup>18</sup> Much as many people view oncologists as authorities on which tumors are cancerous and which are benign, people may view judges as experts on what conduct should be regulated and what should be tolerated. For instance, people may seek factual guidance from the law about the relative risks and benefits of various forms of conduct: a law banning vaping signals that vaping is risky, while a law permitting vaping signals that it is safe.<sup>19</sup> A similar process may occur for moral questions: people who are disposed to trust the court system may view judges as experts on which sorts of behaviors ought to be punished and which should be permitted. These hypothesized mechanisms—emulating role models and deferring to experts—are consistent with classic social psychology theories of attitude change, which posit that people are more persuaded by social authorities than by ordinary people without notable authority or expertise.<sup>20</sup>

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<sup>16</sup> See Richard H. McAdams, *An Attitudinal Theory of Expressive Law*, 79 OR. L. REV. 339, 366–69 (2000); cf. Margaret E. Tankard & Elizabeth Levy Paluck, *The Effect of a Supreme Court Decision Regarding Gay Marriage on Social Norms and Personal Attitudes*, 28 PSYCH. SCI. 1334, 1341–42 (2017) (reporting two empirical studies suggesting that institutional decisions by the Supreme Court can shift public perceptions of social norms). Psychologists Margaret Tankard and Elizabeth Levy 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.” Tankard & Paluck, *supra* note 16, at 1335. However, they note that people can perceive shifts in social norms without changing their own views accordingly: “[S]ocial norms may not always align with personal attitudes.” *Id.*

<sup>17</sup> McAdams, *supra* note 16, at 342–43, 347–49.

<sup>18</sup> ROBERT B. CIALDINI, *INFLUENCE: THE PSYCHOLOGY OF PERSUASION* 163–64 (rev. ed. 2007).

<sup>19</sup> RICHARD H. MCADAMS, *THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS* 153–57 (2015) (calling this mechanism “risk signaling” and explaining that some people may look to the law for factual guidance, as distinct from moral guidance).

<sup>20</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, 409–10 (Susan T. Fiske et al. eds., 5th ed. 2010).

A third, related, idea is that people are motivated to behave in accordance with the law, by virtue of it being the law.<sup>21</sup> Perhaps, rather than thinking like the Holmesian “bad man,”<sup>22</sup> who is interested in knowing the law only to the extent that it helps him predict what consequences would befall him if he engaged in certain conduct, people instead think more like the “puzzled man” theorized by H.L.A. Hart.<sup>23</sup> The puzzled man is interested in knowing what the law is because he “is motivated . . . to do the lawful thing” irrespective of the threat of sanctions.<sup>24</sup> As the legal philosopher Scott Shapiro explains, “[v]irtually everyone thinks that theft is morally wrong, but only some think that theft is morally wrong, at least in part, because the law has prohibited it.”<sup>25</sup> This subset of individuals—the “good citizens,” in Shapiro’s terms—“accept that the duties imposed by the rules are separate and independent moral reasons to act.”<sup>26</sup> While scholars have proposed that there are “‘many’ such people in actual societies,”<sup>27</sup> surprisingly little empirical research has investigated whether people take the law itself, apart from sanctions, as a reason to act and whether such people account for a substantial proportion of the population.<sup>28</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.

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<sup>21</sup> FREDERICK SCHAUER, *THE FORCE OF LAW*, at x (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>22</sup> Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897):

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>23</sup> H.L.A. HART, *THE CONCEPT OF LAW* 40 (Penelope A. Bulloch et al. eds., 3rd ed. 2012).

<sup>24</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>25</sup> SCOTT J. SHAPIRO, *LEGALITY* 70 (2011).

<sup>26</sup> *Id.*

<sup>27</sup> SCHAUER, *supra* note 24, at 106 (quoting SHAPIRO, *supra* note 25, at 69).

<sup>28</sup> *Id.* 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.

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 laws and the public's regard for the social groups protected by such laws.<sup>29</sup> 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 by observing how this manipulation affects majority-group members' regard for members of that minority group.

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 (ADA),<sup>30</sup> for example, prohibits discrimination in employment, transportation, and public accommodations; it does not require anyone to be more accepting of depressed individuals as neighbors, friends, or family. Yet, we sought to examine whether legal rules prohibiting discrimination might nonetheless enhance the status of group members.

This paper does not purport to investigate 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>31</sup> Instead, it seeks to learn whether law can shift prejudice and reduce stigma more broadly, beyond deterring the discriminatory behavior that is prohibited. It thus seeks to explore whether the law's persuasive power extends beyond the law's enforcement grasp.

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<sup>29</sup> A recent audit study examined the behavioral effects of a high-profile antidiscrimination case, but it did not examine how the ruling affected prejudicial attitudes toward members of the target group (i.e., toward LGBTQ+ individuals). See Netta Barak-Corren, *A License to Discriminate? The Market Response to Masterpiece Cakeshop*, 56 HARV. C.R.-C.L. L. REV. 315, 333–52 (2021) (finding that wedding vendors were less likely to agree to provide services to same-sex couples after the Supreme Court ruled in favor of a baker who refused to create a wedding cake for a same-sex couple in *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018)).

<sup>30</sup> Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§ 12101-12213 and in scattered sections of 29, 47 U.S.C.).

<sup>31</sup> See, e.g., 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, 201 (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 toward the applicant).

## 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>32</sup> For example, a longitudinal study conducted by Professor Rebecca Kreitzer and colleagues examined public support for marriage equality before and after the 2009 Iowa Supreme Court ruling that legally recognized same-gender marriage in the state.<sup>33</sup> The authors argued that the ruling served as a signal that social norms had changed, which “pressured some respondents to modify their expressed attitudes.”<sup>34</sup> However, these studies 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

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<sup>32</sup> The few studies that have used experimental methods have generally examined whether support for a policy increases when people believe the policy is already law, rather than asking whether intergroup attitudes (e.g., prejudice) change in response to the beliefs about legal regime. *See, e.g.*, PAUL M. SNIDERMAN & THOMAS PIAZZA, *THE SCAR OF RACE* 131–32 (1993). The authors varied whether participants were told that legislators had passed a law setting aside a certain number of federal contracts for minorities. They found that a majority supported such set-asides when told it was already the law, but a majority opposed the policy when they believed it was not. The authors concluded from the findings that 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.” *Id.* at 131. Other studies showed that beliefs about the legality of employment discrimination affect support for employment discrimination. *See, e.g.*, 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, E213–16 (2012) (demonstrating that 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”). In one lab study, “prior to interviewing a gay or lesbian confederate applicant for a management position, 229 participants were led to believe that their area either does or does not have sexual orientation antidiscrimination legislation.” Barron & Hebl, *supra* note 31, at 191, 200–02. The study found that when participants interviewed a confederate for a job, those who believed that discrimination was illegal showed less prejudice, as measured by spontaneous use of anxiety-related words and nonfluencies (for example, “uh,” “er,” “umm”), which imply nervousness or stress, and that the interviews lasted longer, with more words spoken. *Id.* The authors concluded that “antidiscrimination laws correspond to decreased interpersonal discrimination toward gay and lesbian job applicants.” *Id.*

<sup>33</sup> *See generally* Rebecca J. Kreitzer, Allison J. Hamilton & Caroline J. Tolbert, *Does Policy Adoption Change Opinions on Minority Rights? The Effects of Legalizing Same-Sex Marriage*, 67 POL. RSCH. Q. 795 (2014).

<sup>34</sup> *Id.* at 795, 805–06; *see also* Andrew R. Flores & Scott Barclay, *Backlash, Consensus, Legitimacy, or Polarization: The Effect of Same-Sex Marriage Policy on Mass Attitudes*, 69 POL. RSCH. Q. 43, 47–48 (2016) (using feeling thermometers to measure the reduction in anti-gay attitudes following high-profile legal rulings on same-sex marriage).



attitudes.<sup>35</sup> The researchers looked at population-level implicit and explicit attitudes toward gay and lesbian people over time, from 2005 to 2016.<sup>36</sup> They found that, overall, attitudes became less severely antigay 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.<sup>37</sup> 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.<sup>38</sup> 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.

### C. The Present Research

In the present research, we randomly vary the legal regime presented to survey respondents, who are, in expectation, identical in their existing levels of prejudice. We test whether inducing the belief that discrimination against a group is legal (versus illegal) affects self-reported 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 evolving in response to attitude change.

This Article proceeds as follows. In Study 1, we test the hypothesis that legal regimes can send a signal about the status of a social group. While this claim is frequently asserted, we seek 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 present Study 1 participants with a fictional society. We find that the law can indeed send signals about societal values and that people can infer

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<sup>35</sup> Eugene K. Ofofu, Michelle K. Chambers, Jacqueline M. Chen & Eric Hehman, *Same-Sex Marriage Legalization Associated with Reduced Implicit and Explicit Antigay Bias*, 116 PROC. NAT'L ACAD. OF SCI. 8846, 8848–50 (2019); *see also* Cevat G. Aksoy, Christopher S. Carpenter, Ralph De Haas & Kevin D. Tran, *Do Laws Shape Attitudes? Evidence from Same-Sex Relationship Recognition Policies in Europe*, 124 EUR. ECON. REV. 103399 (2020), at 6–11.

<sup>36</sup> Ofofu et al., *supra* note 35, at 8850–51.

<sup>37</sup> *Id.* at 8849–50.

<sup>38</sup> *Cf. id.*

group hierarchies based 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 and 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 people with clinical depression.<sup>39</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 them. 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 preregistered replication. To demonstrate the robustness of Study 2's discovery that only participants who display a high level of trust in the courts change their social attitudes in response to the 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. Taken together, these findings underscore the expressive power of law beyond the regulation of behavior.

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. Study 2 finds, and Study 3 confirms, that

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<sup>39</sup> People in the United States 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. See Lindsey L. Monteith & Jeremy W. Pettit, *Implicit and Explicit Stigmatizing Attitudes and Stereotypes About Depression*, 30 J. SOC. & CLINICAL PSYCH. 484, 493–500 (2011) (assessing the stigma and discrimination faced by people with depression); see also Annie B. Fox, Valerie A. Earnshaw, Emily C. Taverna & Dawne Vogt, *Conceptualizing and Measuring Mental Illness Stigma: The Mental Illness Stigma Framework and Critical Review of Measures*, 3 STIGMA & HEALTH 348, 364–66 (2018). It is possible to discuss these forms of prejudice and discrimination in a manner analogous to discrimination on the basis of physical disability status. See NAT'L ACAD. SCIS., ENG'G & MED., ENDING DISCRIMINATION AGAINST PEOPLE WITH MENTAL AND SUBSTANCE USE DISORDERS: THE EVIDENCE FOR STIGMA CHANGE 45–47 (2016).

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 Shapiro’s “good citizens,” 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>40</sup> Discrimination in this domain is pervasive: 79% of those with major depressive disorder report facing discrimination in at least one area of their life.<sup>41</sup> Over 60% of people living with depression report anticipating or experiencing discrimination while at work, and nearly a third have prevented themselves from applying for work, education, or training opportunities because of anticipated discrimination.<sup>42</sup> In accessing healthcare, people with mental illnesses, including depression, receive lower-quality care due to stigma and often delay or fail to seek both mental and physical care due to anticipated or experienced discrimination.<sup>43</sup> Furthermore, discrimination against people with depression disproportionately affects women, who have higher rates of depression than

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<sup>40</sup> See, e.g., Jennifer Jiwon Na & Alison L. Chasteen, *Does Imagery Reduce Stigma Against Depression? Testing the Efficacy of Imagined Contact and Perspective-Taking*, 46 J. APPLIED SOC. PSYCH. 259, 259 (2015) (noting the relative lack of research into negative attitudes toward individuals with depression).

<sup>41</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, 58 (2013).

<sup>42</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 1, 3 (2016). Other studies have examined stigma against mental illness generally and found similar results. See Crosby Hipes, Jeffrey Lucas, Jo C. Phelan & Richard C. White, *The Stigma of Mental Illness in the Labor Market*, 56 SOC. SCI. RSCH. 16, 20–23 (2016); see also Ashley B. Batastini, Angelea D. Bolaños, Robert D. Morgan & Sean M. Mitchell, *Bias in Hiring Applicants with Mental Illness and Criminal Justice Involvement: A Follow-Up Study with Employers*, 44 CRIM. JUST. & BEHAV. 777, 789–91 (2017). See generally Marjorie L. Baldwin & Steven C. Marcus, *Perceived and Measured Stigma among Workers with Serious Mental Disorders*, 57 PSYCHIATRIC SERVS. 388 (2006).

<sup>43</sup> See Patrick W. Corrigan, Dinesh Mittal, Christina M. Reaves, Tiffany F. Haynes, Xiaotong Han, Scott Morris & Greer Sullivan, *Mental Health Stigma and Primary Health Care Decisions*, 218 PSYCHIATRY RSCH. 35, 36–37 (2014); see also Graham Thornicroft, Diana Rose & Aliya Kassam, *Discrimination in Health Care Against People with Mental Illness*, 19 INT’L. REV. PSYCHIATRY 113, 114–19 (2007); Claire Henderson, Jo Noblett, Hannah Parke, Sarah Clement, Alison Caffrey, Oliver Gale-Grant, Beate Schulze, Benjamin Druss & Graham Thornicroft, *Mental Health-Related Stigma in Health Care and Mental Health-Care Settings*, 1 LANCET PSYCHIATRY 467, 473–75 (2014).

men in every age group.<sup>44</sup> Thus, this Article advances our understanding of a kind of discrimination that is pervasive yet relatively underexamined by social scientists.<sup>45</sup>

## I. 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. 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 U.S. culture and politics. Thus, we asked participants to imagine a fictional society (made up of sentient beings known as "Fendles" and "Zorpies"), and to evaluate a fictional harmful action (known as "gompings"). Researcher-invented terms are commonly used in psychological studies to capture relevant mental processes in a controlled way.<sup>46</sup> This design allowed us to learn whether participants draw inferences about the social standing of groups based *solely* on information about the law.

### A. Pilot Study

We first ran a pilot study ( $n = 251$ ) to examine whether participants would attach value judgments to the individual parties in a legal case taking place in a fictional context. Pilot results indicated that when a court rules that it is legal to do something harmful to an individual, it signals that the society in question

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<sup>44</sup> Laura A. Pratt & Debra J. Brody, *Depression in the U.S. Household Population, 2009-2012*, 172 NCHS DATA BRIEF, Dec. 2014, at 2.

<sup>45</sup> See, e.g., Na & Chasteen, *supra* note 40, at 259.

<sup>46</sup> Other psychological research has used fictional groups in hypothetical scenarios in order to capture relevant mental processes in a controlled way. See, e.g., Eric Luis Uhlmann, Victoria L. Brescoll & Elizabeth Levy 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, 494-96 (2006). For more research using fictional terms, see, for example, Erica H. Wojcik & Jenny R. Saffran, *Toddlers Encode Similarities among Novel Words from Meaningful Sentences*, 138 COGNITION 10, 12-14 (2015) (presenting subjects with statements such as "the tursey broke the pif" and "the coro broke the blicket"); Alison Gopnik & David M. Sobel, *Detecting Blickets: How Young Children Use Information About Novel Causal Powers in Categorization and Induction*, 71 CHILD. DEV. 1205, 1207-10 (2000) (introducing subjects to a "blicket detector"); Gil Diesendruck, Lori Markson & Paul Bloom, *Children's Reliance on Creator's Intent in Extending Names for Artifacts*, 14 PSYCH. SCI. 164, 165 (2003) ("This is a fendle. See what it looks like.").

devalues that individual, as compared to situations in which a court rules that such conduct is illegal, or when the case concerns behavior that is non-harmful.<sup>47</sup> The pilot study confirmed that even when presented with a fictional legal system, participants were willing to draw inferences about the relative value and status of individual parties. 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, as opposed to judgments of the individual victim.

## B. Study 1 Method

For Study 1 we recruited 123 participants<sup>48</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>49</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>50</sup>

The scenario left ambiguous whether being gomped is objectionable because it is harmful, because it is insulting, or for some

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<sup>47</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 on Amazon Mechanical Turk (*Mean age* = 33.87, *SD* = 10.56; 117 women, 133 men, 1 nonbinary; 179 White, 23 Black, 19 Asian, 13 Latino/a/x, 17 other).

<sup>48</sup> All reported sample sizes throughout the paper are after exclusions. In this study, 128 participants 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 1 who declined to respond to that question. The resulting sample included 63 men, 60 women; ages ranged from 22 to 67, *Mean age* = 35.57, *SD* = 10.93, *Median age* = 32; 93 participants were White, 9 Black, 9 Latino/a/x, 7 Asian, and 5 multiracial. Although it makes little difference here, the question about intending responses as jokes has been used as an inclusion criterion in some past work. See, e.g., Sara E. Burke & Marianne LaFrance, *Lay Conceptions of Sexual Minority Groups*, 45 ARCHIVES SEXUAL BEHAV. 635, 638 (2016).

<sup>49</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>50</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.

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 the severity or nature of the unwanted conduct. In order to establish that the legal issue in question was connected to group membership, we specified that gompings were actions that Fendles typically 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 gompings are illegal in this world” (Illegal Condition) or that “the legal system chose not to punish” the Fendle “because gompings are not illegal in this world” (Legal Condition).

1. Participants’ own evaluations, measured by feeling thermometers.

After reading the scenario, participants were asked, “How do you feel about Zorpies in general?” and were given a “feeling thermometer”<sup>51</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) and the perpetrator’s group (“Fendles in general”).

2. Perceptions of social evaluation.

Participants used the same feeling thermometers to rate 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>52</sup> Again, we were primarily

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<sup>51</sup> See, e.g., Duane F. Alwin, *Feeling Thermometers Versus 7-Point Scales: Which Are Better?*, 25 SOCIO. METHODS & RSCH. 318, 323–24 (1997); Leonard J. Simms, Kerry Zelazny, Trevor F. Williams & Lee Bernstein, *Does the Number of Response Options Matter? Psychometric Perspectives Using Personality Questionnaire Data*, 31 PSYCH. ASSESSMENT 557, 564–65 (2019); HERBERT F. WEISBERG & ARTHUR H. MILLER, EVALUATION OF THE FEELING THERMOMETER: A REPORT TO THE NATIONAL ELECTION STUDY BOARD BASED ON DATA FROM THE 1979 PILOT SURVEY 15–23 (1979).

<sup>52</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.

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 that 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 that represents 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.

Finally, participants evaluated the action in question ("gompings") 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>53</sup> Before exiting the study, participants filled out a sociodemographic survey.<sup>54</sup>

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<sup>53</sup> Four items, Cronbach's  $\alpha = .95$ .

<sup>54</sup> They were also asked to rate the legitimacy of the court system in this fictional society. See *infra* Part II.A. In general, their perceptions of court legitimacy did not interact with their judgments in significant ways.

## C. Results

### 1. Primary results.

FIGURE 1: EFFECTS OF LEGALITY OF DISCRIMINATION IN STUDY 1

This plot summarizes (1) evaluation (rating using feelings thermometers), (2) the perceived social status of the victim, and (3) the perceived social status of the victim's group, depending on the legality of discrimination. Participants were randomly assigned to be told that the harm done to a fictional being was either legal or illegal and that this kind of harm was routinely done to other members of that fictional being's social group. When the harm was legally permitted, participants drew the conclusion that the victim (top row) and the victim's social group (bottom row) were lower in social status and evaluated more negatively by others in the imagined society. In reporting their own feelings, participants did not devalue the victim or victim's group based on the legal regime. Error bars represent one standard error above and below the mean.

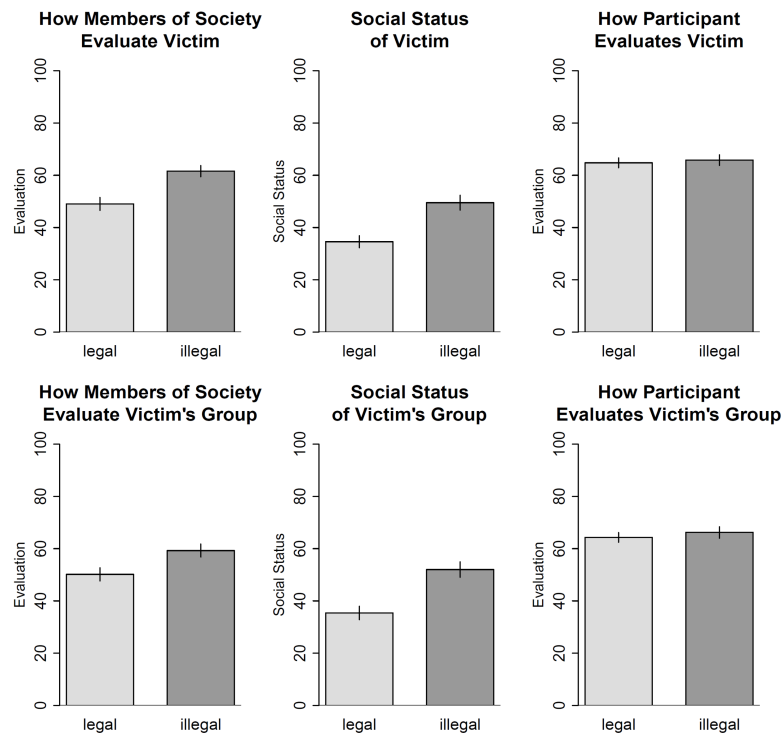




TABLE 1: EFFECTS OF LEGALITY OF DISCRIMINATION IN STUDY 1

This table describes the effects of condition (discrimination portrayed as legal versus illegal) on (1) evaluation, (2) the perceived social status of the victim, and (3) the perceived social status of the victim's group. Evaluation measures were recorded with feeling thermometers ranging from 0 (very negative) to 100 (very positive). Social status measures were computed by averaging three 0–100 scales that measured perceived social status, power, and respect.

	Legal		Illegal		<i>t</i>	<i>p</i>	<i>d</i>
	<i>M</i>	<i>SD</i>	<i>M</i>	<i>SD</i>			
Societal Evaluation of Victim	49.05	19.13	61.56	17.14	3.82	< .001	0.69
Societal Evaluation of Victim's Group	50.15	19.11	59.27	19.77	2.59	.011	0.47
Perceived Social Status of Victim	34.53	17.54	49.53	22.81	4.05	< .001	0.73
Perceived Social Status of Victim's Group	35.36	19.86	52.01	23.37	4.24	< .001	0.77
Participant Evaluation of Victim	64.76	14.65	65.83	16.15	0.38	.70	0.07
Participant Evaluation of Victim's Group	64.29	14.34	66.20	17.67	0.66	.51	0.12

Our key hypothesis was that when a society fails to punish undesirable conduct that one group tends to perpetrate against another group, people infer—without any other context—that 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>55</sup> Participants also rated the victim as lower in social status.

Second, we examined whether this phenomenon extends to devaluation of the victim's social group as a whole when its members have been 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. The same was true of perceptions of status: participants rated the social group

<sup>55</sup> See Table 1 for all relevant means, standard deviations, and *t*-test details.

as a whole as lower in power, respect, and social status when the action was legal than when it was illegal.

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. 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>56</sup> In this case, participants had been asked to imagine that they were total outsiders to the society in question.

## 2. Other results.

Finally, although our theory is not focused on how the behavior in question (gompings) is perceived or how the perpetrator and its group (Fendle X and Fendles in general) are perceived, we also tested whether these perceptions differed based on legal regime. Participants perceived gompings to be more moral and acceptable if it was legal than if it was illegal.<sup>57</sup> Also, when the action was illegal and the perpetrator was 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>58</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>59</sup> Participants also reported

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<sup>56</sup> See Sara Emily Burke, *Distinctive Negative Reactions to Intermediate Social Groups*, OPENICPSR (October 31, 2021), <https://doi.org/10.3886/E146023V1>.

<sup>57</sup> Legal:  $M = 29.13$ ,  $SD = 21.17$ ; illegal:  $M = 21.63$ ,  $SD = 19.59$ ;  $t(121) = 2.04$ ,  $p = .043$ ,  $d = 0.37$ .

<sup>58</sup> Estimate of how members of society evaluate the perpetrator, legal:  $M = 48.78$ ,  $SD = 21.67$ ; illegal:  $M = 33.98$ ,  $SD = 18.79$ ;  $t(121) = -4.05$ ,  $p < .001$ ,  $d = 0.73$ . Perceived social status of the perpetrator, legal:  $M = 64.10$ ,  $SD = 17.45$ ; illegal:  $M = 45.97$ ,  $SD = 21.58$ ;  $t(121) = -5.10$ ,  $p < .001$ ,  $d = 0.92$ .

<sup>59</sup> Estimate of how members of society evaluate the perpetrator's group, legal:  $M = 52.03$ ,  $SD = 22.17$ ; illegal:  $M = 43.75$ ,  $SD = 21.29$ ;  $t(121) = -2.11$ ,  $p = .037$ ,  $d = 0.38$ .

their own favorable or unfavorable evaluations of the perpetrator and perpetrator's group, which did not substantially differ by condition.<sup>60</sup>

#### D. Discussion

The expressive theory of law posits that “law changes behavior by signaling the underlying attitudes of a community or society.”<sup>61</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 prohibit) unwelcome actions taken against members of that group. We did not find evidence that respondents themselves alter their feelings toward the victim or their social group based on legal regime, but we found evidence that respondents 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.

## II. STUDY 2

In Study 2, we moved from the decontextualized fictional society to the real world. We presented U.S.-based participants with information about the law governing their own society and probed their attitudes toward members of a familiar subgroup. In order to manipulate participants' beliefs about the law, we described a scenario in which an employee had clearly suffered an adverse employment outcome on the basis of her mental health status.<sup>62</sup>

Legally, discrimination against people with mental health conditions violates federal disability law in many instances. The

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Perceived social status of the perpetrator's group, legal:  $M = 68.71$ ,  $SD = 17.23$ ; illegal:  $M = 52.37$ ,  $SD = 22.03$ ;  $t(121) = -4.56$ ,  $p < .001$ ,  $d = 0.83$ .

<sup>60</sup> Evaluation of perpetrator, legal:  $M = 29.73$ ,  $SD = 19.72$ ; illegal:  $M = 26.02$ ,  $SD = 19.94$ ;  $t(121) = -1.04$ ,  $p = .30$ ,  $d = 0.19$ . Evaluation of perpetrator's group, legal:  $M = 37.80$ ,  $SD = 17.71$ ; illegal:  $M = 39.09$ ,  $SD = 22.37$ ;  $t(121) = 0.35$ ,  $p = .72$ ,  $d = 0.06$ .

<sup>61</sup> McAdams, *supra* note 16, at 340.

<sup>62</sup> The research thus differs from Professor Jennifer Bennet Shinall's studies conducted with more ambiguous vignettes, involving candidates with “acquired, physical health conditions that are uncertain in terms of redressability, voluntariness, and coverage under the ADA.” Jennifer Bennett Shinall, *Anticipating Accommodation*, 105 IOWA L. REV. 621, 645 (2020).

ADA defines disability as “a physical or mental impairment that substantially limits one or more major life activities of such individual.”<sup>63</sup> Individuals additionally must have “a record of such impairment” or of “being regarded as having such an impairment.”<sup>64</sup> Following the ADA Amendments Act of 2008,<sup>65</sup> the U.S. Equal Employment Opportunity Commission acknowledged that clinical depression “easily” qualifies as a disability.<sup>66</sup> Because “[p]hysical or mental impairment” includes “[a]ny mental or psychological disorder, such as . . . emotional or mental illness . . .,” most diagnosable mental health conditions satisfy the definition of impairment under the ADA.<sup>67</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. 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.<sup>68</sup> Thus, while legal scholars might recognize that the blatant discrimination depicted

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<sup>63</sup> 42 U.S.C. § 12102(1)(A).

<sup>64</sup> 42 U.S.C. § 12102(1)(B)–(C).

<sup>65</sup> Pub. L. No. 110-325, 122 Stat. 3553 (2008) (codified in scattered sections of 42 U.S.C.).

<sup>66</sup> 29 C.F.R. § 1630.2(j)(3)(iii) (2020); *see also* Katie Eyer, *Claiming Disability*, 101 B.U. L. REV. 547, 554, 558 n.42 (2021) (explaining that the ADA Amendments Act of 2008 was accompanied by interpretive rules expanding the definition of disability).

<sup>67</sup> Eyer, *supra* note 66, at 564 n.70 (first two alterations in original) (quoting 29 C.F.R. § 1630.2(h) (2020)). We leave ambiguous in our study scenarios whether the target has major depressive disorder.

<sup>68</sup> *See* Roseanna Sommers & Sara Emily Burke, *The Legal Status of Discrimination Can Alter Personal Prejudice Against People with Depression*, OPENICPSR (July 26, 2021), <https://doi.org/10.3886/E146023V1> (“other studies” section). Participants were reluctant to believe that discrimination on the basis of religion would be permitted by the law. *See id.* Although participants indicated in one study that legal discrimination against Wiccans in particular seemed as plausible as legal discrimination against people with depression, *see id.* (“other studies” section, “comparison of groups—employment discrimination” folder), our separate attempt to manipulate the perceived legality of discrimination against Wiccans was met with skepticism, *see id.* (“other studies” section, “Wiccan job applicant” folder).

in our scenarios likely violates the ADA, laypeople generally find it plausible that such discrimination is legal.<sup>69</sup>

#### A. Method

We recruited 250 participants<sup>70</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. Depression is one of the most common types of mental illness.<sup>71</sup> While depression may not be representative of all mental illness (or all mental illness discrimination), its prevalence makes it a useful example for an initial demonstration of the phenomenon of interest.

In the key manipulation, participants were told either that the case was resolved in the applicant's favor, because it is illegal to discriminate based on mental health history (Illegal Condition) or that it was resolved in the employer's favor, because 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 [or, alternatively, the company's] favor, explaining that it is currently illegal

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<sup>69</sup> Indeed, prior empirical research suggests that "even when there is substantial evidence of traditional invidious discriminatory intent (including so-called direct evidence) most people will decline to make attributions to discrimination." Katie R. Eyer, *That's Not Discrimination: American Beliefs and the Limits of Anti-discrimination Law*, 96 MINN. L. REV. 1275, 1278 (2012).

<sup>70</sup> 252 people completed the survey, and we excluded one participant who responded "yes" to the question, "Were any of your answers in this survey intended as jokes?" and one participant 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, *Mean age* = 39.14, *SD* = 12.98, *Median age* = 36; 208 were White, 13 Latino/a/x, 11 Black, 9 Asian, 7 fell into other categories, and 2 declined to specify race/ethnicity.

<sup>71</sup> *Major Depression*, NAT'L INST. MENTAL HEALTH, <https://perma.cc/YYQ3-AFSE>; see also Pratt & Brody, *supra* note 44, at 2.

[or, alternatively, legal] in the United States to refuse to hire someone on the basis of their mental illness history.<sup>72</sup>

After reading the scenario, participants responded to a series of items presented in random order that captured their reactions to the scenario and the legal issues it raised, with seven-point Likert scales ranging from “strongly disagree” to “strongly agree.”<sup>73</sup> One subset referred to participants’ own reported degrees of support for discrimination on the basis of mental health history, which was measured with thirteen items presented in random order.<sup>74</sup> All items were scored such that higher numbers indicated endorsement of discrimination. The items were:

1. In the scenario I read about, I support the company’s decision not to hire Amy
2. In the scenario I read about, I oppose the company’s decision not to hire Amy
3. In the scenario I read about, the judge should have ruled in favor of the company
4. In the scenario I read about, the judge should have ruled in favor of Amy
5. Companies should routinely refuse to hire people with a history of mental illness
6. Companies should never refuse to hire people with a history of mental illness
7. 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
8. 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
9. I believe that it is moral to refuse to hire someone on the basis of their mental illness history
10. I believe that it is wrong to refuse to hire someone on the basis of their mental illness history
11. It should be legal in the United States to refuse to hire someone on the basis of their mental illness history

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<sup>72</sup> The stimuli that participants viewed did not use boldface font, which is used here to make clear the difference between conditions.

<sup>73</sup> Four items, Cronbach’s  $\alpha = .80$ .

<sup>74</sup> Thirteen items, Cronbach’s  $\alpha = .96$ .

12. It should be illegal in the United States to refuse to hire someone on the basis of their mental illness history
13. In the scenario I read about, the company should be punished for discriminating against Amy

We also computed the degree to which participants believed that other Americans endorse discrimination on the basis of a history of mental illness, using a four-item scale.<sup>75</sup> The items were:

1. Most Americans believe that it should be legal to refuse to hire someone on the basis of their mental illness history
2. Most Americans believe that it should be illegal to refuse to hire someone on the basis of their mental illness history
3. Most Americans believe that it is moral to refuse to hire someone on the basis of their mental illness history
4. Most Americans believe that it is wrong to refuse to hire someone on the basis of their mental illness history

We also included two questions designed to measure participants' beliefs about whether the discrimination in question is in fact legal. As described earlier, we manipulated the applicable legal regime by presenting participants with a vignette describing a judge who ruled either in an individual plaintiff's favor or against her. We surmised that this manipulation would induce participants to believe that such discrimination was in fact legal (or illegal) and that few participants would entertain the possibility that the judge had misinterpreted or misapplied the law. The following two "manipulation check" items were designed to test this assumption. If our manipulation worked as anticipated, we would expect to observe significant differences between conditions in the degree to which participants believed it was currently illegal to discriminate on the basis of mental health.

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<sup>75</sup> Four items, Cronbach's  $\alpha = .80$ . All items were scored so that higher numbers indicated perceived endorsement of discrimination. We also asked participants to rate their agreement with the statement, "Many Americans disagree about whether it should be legal to refuse to hire someone on the basis of their mental illness history." We included this item as an exploratory measure of perceived controversy, but do not include it in our index measure of participants' belief that others endorse discrimination. See Supplemental Online Materials (SOM) available at <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/SuppTables.pdf>.

- 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

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—0–100 sliding scales that ranged from cold to warm, unfavorable to favorable, and negative to positive.<sup>76</sup> Participants filled out these three scales in response to each of the following questions:

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

We also asked a set of questions meant to capture participants' desired social distance from individuals with a history of mental illness:<sup>77</sup>

1. I could become very good friends with someone with a history of mental illness
2. I sometimes avoid people with a history of mental illness
3. 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>78</sup>

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<sup>76</sup> Three items, Cronbach's  $\alpha = .91$ .

<sup>77</sup> We computed a single index of participants' evaluation of people with depression by standardizing and averaging the three feeling thermometers and the three 1–7 Likert items about social distance: six 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>78</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



Amy was described as having depression, but the judge in our scenario made a statement about the legality of discrimination on the basis of mental illness. We report results for questionnaire items about depression and items about mental illness separately, while acknowledging that depression was probably the most salient mental illness in participants' minds at the time of the survey. Participants' evaluations across the three feeling thermometers were weakly positive overall, with mean ratings in the sixties.<sup>79</sup>

Next, participants completed three scales: the Right Wing Authoritarianism (RWA) scale,<sup>80</sup> which measures adherence to established authorities and antipathy toward those who violate social norms; the Need for Cognition (NFC) scale<sup>81</sup>, which measures a robust motivation to put effort into cognitive activity; and a fourteen-item scale measuring perceptions of the legitimacy of courts.<sup>82</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 Professors Tom Tyler and Jeffrey Fagan's scale measuring perceptions of the legitimacy of the police.<sup>83</sup> We adapted their scale so that it would capture participants' feelings of obligation, trust, and confidence in the courts.<sup>84</sup> The fourteen items were as follows:

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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,  $r = .61$ .

<sup>79</sup> See SOM for tables showing descriptive information about each item individually.

<sup>80</sup> See BOB ALTEMEYER, RIGHT-WING AUTHORITARIANISM 170–73 (1981). See generally BOB ALTEMEYER, THE AUTHORITARIANS (2010 ed.).

<sup>81</sup> John T. Cacioppo & Richard E. Petty, *The Need for Cognition*, 42 J. PERSONALITY & SOC. PSYCH. 116, 118–24, 128–29 (1982); John T. Cacioppo, Richard E. Petty & Chuan Feng Kao, *The Efficient Assessment of Need for Cognition*, 48 J. PERSONALITY ASSESSMENT 306, 306–07 (1984).

<sup>82</sup> Cronbach's  $\alpha = .89$ . The manipulation of the legality of discrimination did not have a significant effect on court legitimacy,  $t(238) = 1.03$ ,  $p = .30$ ,  $d = 0.13$ . Legal condition:  $M = 4.09$ ,  $SD = 0.97$ ; illegal condition:  $M = 4.22$ ,  $SD = 0.99$ .

<sup>83</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>84</sup> We do not claim that this measure fully captures all aspects of court legitimacy. We merely argue that it contains face valid self-reports of some aspects, that the items correspond to similar items to measure trust in other forms of legal authority, see e.g., *id.*, and that responses permit us to distinguish between people who generally trust courts and people who generally do not. Notably, while much attention has been paid to the public's perception of the legitimacy of the U.S. Supreme Court, see generally, e.g., Alex Badar, *The Applied Legitimacy Index: A New Approach to Measuring Judicial Legitimacy*, 100

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

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 and were debriefed.

For descriptive purposes, we explored demographic associations with court legitimacy. Court legitimacy was slightly positively correlated with participant age ( $r(238) = .13$ ,  $p = .039$ ). Women ( $M = 4.27$ ,  $SD = 0.88$ ) and men ( $M = 4.05$ ,  $SD = 1.06$ ) did not significantly differ on this measure ( $t(236) = 1.75$ ,  $p = .082$ ,  $d = 0.23$ ). Neither did White ( $M = 4.08$ ,  $SD = 0.65$ ) and non-White

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SOC. SCI. Q. 1848 (2019); James L. Gibson, Gregory A. Caldeira & Lester Kenyatta Spence, *Measuring Attitudes toward the United States Supreme Court*, 47 AM. J. POL. SCI. 354 (2003), we sought to measure participants' attitudes toward the judicial system more generally.

( $M = 4.17$ ,  $SD = 1.02$ ) participants ( $t(236) = 0.50$ ,  $p = .62$ ,  $d = 0.10$ ).

## B. Results<sup>85</sup>

### 1. Manipulation check.

Participants' beliefs about the law might be experimentally manipulated in any number of ways; here, we chose to focus on the outcome of an individual case as decided by an individual judge. Our intention was to give participants a short but psychologically vivid example of how the legal regime in question might work. As described earlier, however, there could be drawbacks to focusing on the judgment of a single judge. For instance, participants might wonder whether the judge in question was a reliable source about the true status of the law, or held an opinion at odds with others in the legal system. The results of our manipulation check items mitigate this concern: as predicted, participants in the illegal condition were significantly more likely to believe that it is currently illegal to discriminate on the basis of mental health history ( $M = 5.01$ ,  $SD = 1.79$ ) than were participants in the legal condition ( $M = 2.51$ ,  $SD = 1.69$ ),  $t(247) = 11.29$ ,  $p < .001$ .<sup>86</sup> Thus, the vignettes succeeded in changing participants' beliefs about the current state of the law.

### 2. Primary results.

Does learning that discrimination on the basis of mental health history is illegal (versus 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.<sup>87</sup> We fit linear regression models with terms for the legality manipulation, court legitimacy, and their interaction. We observed a significant interaction between our manipulation and participants' background belief in the legitimacy of the legal

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<sup>85</sup> Summary statistics and supplementary statistical analysis are included in an online appendix, available at <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/SuppTables.pdf>.

<sup>86</sup> Furthermore, this effect was not significantly moderated by perceived court legitimacy,  $b = 0.14$ ,  $SE = 0.23$ ,  $p = .54$ ,  $\beta = 0.07$ , and it was statistically significant when estimated at high and low levels of court legitimacy,  $p < .001$ .

<sup>87</sup> See Figure 2(A), "Evaluation of People with Depression."

system,  $b = -0.33$ ,  $SE = 0.10$ ,  $p = .001$ ,  $\beta = -0.42$ .<sup>88</sup> In this regression model, the estimated difference between the legal and illegal conditions is a linear function of court legitimacy. All participants are included in the analysis regardless of where they fall on the continuous court legitimacy measure, but to give a sense of how the typical participant falling on lower or higher side of the court legitimacy scale might respond, we report point estimates at one standard deviation (SD) above and below the mean.

Participants who viewed the court system as highly legitimate (i.e., one standard deviation above the mean of legitimacy) evaluated people with depression more negatively when discrimination was presented as legal (versus illegal). In contrast, participants who viewed the court system as low in legitimacy (one standard deviation below the mean) evaluated people with depression most favorably when discrimination against them was portrayed as legal.<sup>89</sup>

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<sup>88</sup> 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>89</sup> See Table 2 for key slopes at low and high levels of court legitimacy.

FIGURE 2: EFFECTS OF LEGALITY OF DISCRIMINATION IN STUDY 2

When discrimination was portrayed as illegal, participants who viewed courts as high in legitimacy evaluated people with depression and mental illness more positively, endorsed discrimination less, and believed that others endorsed discrimination less. Participants were randomly assigned to be told that discrimination on the basis of mental illness was either legal or illegal. Among participants who generally viewed the courts as legitimate, portraying discrimination as legal caused relatively negative evaluations of people with depression and other mental illnesses. Portraying discrimination as legal also caused more endorsement of discriminatory behavior among these participants, and greater belief that others endorse discrimination. Error bars represent one standard error above and below the mean.

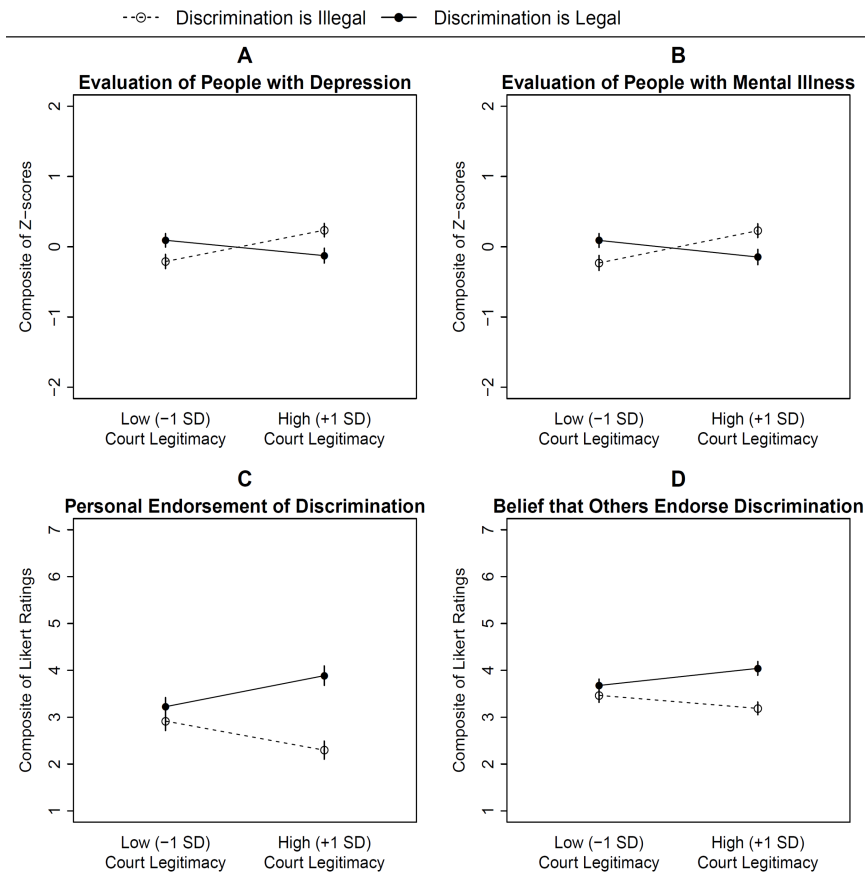


TABLE 2: EFFECTS OF LEGALITY OF DISCRIMINATION IN STUDY 2

This table describes the effects of condition (discrimination portrayed as legal versus illegal) on evaluations and perceptions among people who perceived courts as high (1 SD above the mean) and low (1 SD below the mean) in legitimacy. The letter *b* denotes the difference between responses under the conditions in the original units of the response scale, treating the illegal condition as the baseline. *SE* denotes the standard error of that difference estimate.  $\beta$  denotes a slope computed by standardizing the response variable and not the condition indicator variable.

	High (+1 SD) in Court Legitimacy				Low (-1 SD) in Court Legitimacy			
	<i>b</i>	<i>SE</i>	$\beta$	<i>p</i>	<i>b</i>	<i>SE</i>	$\beta$	<i>p</i>
Evaluation of people with depression	-0.36	0.15	-0.46	.013	0.30	0.14	0.39	.035
Evaluation of people with mental illness	-0.38	0.15	-0.46	.013	0.32	0.15	0.39	.030
Personal endorsement of discrimination	1.59	0.29	0.98	< .001	0.31	0.28	0.19	.28
Perception that "most people" support discrimination	0.85	0.20	0.75	< .001	0.21	0.21	0.19	.30

The same pattern of results held true when it came to participants' evaluations of people with mental health conditions generally.<sup>90</sup> The interaction between condition and court legitimacy was significant,  $b = -0.35$ ,  $SE = 0.11$ ,  $p = .001$ ,  $\beta = -0.43$ .

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. 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.

Participants also reported their views regarding discrimination on the basis of mental health status by rating their agreement with statements such as, "Companies should never refuse to hire people with a history of mental illness."<sup>91</sup> Again, the interaction between condition and court legitimacy was significant,  $b = 0.64$ ,  $SE = 0.20$ ,  $p = .002$ ,  $\beta = 0.40$ .

<sup>90</sup> See Figure 2(B), "Evaluation of People with Mental Illness."

<sup>91</sup> See Figure 2(C), "Personal Endorsement of Discrimination."

As before, for participants who viewed the court system as high in legitimacy, presenting discrimination as illegal (versus legal) led them to rate discrimination as less desirable and less morally acceptable. 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.

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.”).<sup>92</sup> We once again observed a significant interaction between our legality manipulation and participants’ background view that courts are legitimate,  $b = 0.32$ ,  $SE = 0.14$ ,  $p = .027$ ,  $\beta = 0.28$ .

For participants who viewed the court system as highly legitimate, presenting discrimination as legal led them to believe others endorse discrimination more than when discrimination was presented as illegal. For participants who viewed the court system as less legitimate, the legality manipulation had less of an effect on their perceptions of others’ beliefs.

### 3. Other results.

Although it was not central to our hypotheses, we measured participants’ evaluations of Amy, the individual target in the scenario. Participants who were 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 who were one standard deviation above the mean of court legitimacy were less affected by the manipulation.<sup>93</sup> This result is consistent with the finding that participants who are low in court legitimacy react to the lack of legal prohibition for people with mental health conditions by elevating those targeted by such discrimination (Figures 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.

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<sup>92</sup> See Figure 2(D), “Belief that Others Endorse Discrimination.”

<sup>93</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,  $b = -6.76$ ,  $SE = 2.42$ ,  $p = .006$ ,  $\beta = -0.36$ .

The legal regime governing employment discrimination does seem to affect people's attitudes toward social groups in a manner consistent with the expressive message sent by the court's decision, but only among those who view the courts as legitimate.

In Study 2, 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 carryover 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, before conducting Study 3, we preregistered the hypothesis there would be an interaction between perceptions of court legitimacy and the main manipulation portraying discrimination as legal versus illegal.<sup>94</sup> 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).

### III. 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 versus 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 the moderating role of court legitimacy observed in Study 2.

If socially desirable responding was the primary reason that court legitimacy moderated the effect of the manipulation, however, then a more direct measure of a general socially desirable

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<sup>94</sup> The preregistration document is available at <https://perma.cc/QJ8Z-5JZ9>.



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>95</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>96</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 their personal endorsement of discrimination,<sup>97</sup> belief that others endorse discrimination,<sup>98</sup> evaluation of Amy,<sup>99</sup> evaluation of people with depression,<sup>100</sup> and evaluation of people with mental illness.<sup>101</sup>

Participants also responded to the same court legitimacy scale as before.<sup>102</sup> In Study 2, this measure appeared at the end of

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<sup>95</sup> See generally Claire M. Hart, Timothy D. Ritchie, Erica G. Hepper & Jochen E. Gebauer, *The Balanced Inventory of Desirable Responding Short Form (BIDR-16)*, SAGE OPEN (2015) (establishing a short version of the Balanced Inventory of Desirable Responding using items describing oneself as, for example, “completely rational”).

<sup>96</sup> 504 people completed the survey. We excluded ten participants who responded “yes” to the question, “Were any of your answers in this survey intended as jokes?” and one participant 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 two participants 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, *Mean age* = 37.57, *SD* = 11.41, *Median age* = 34; 363 were White, 39 Black, 32 Asian, 22 Latino/a/x, and 27 fell into another category.

<sup>97</sup> Fourteen items, Cronbach’s  $\alpha$  = .96.

<sup>98</sup> Four items, Cronbach’s  $\alpha$  = .82.

<sup>99</sup> Three items, Cronbach’s  $\alpha$  = .95.

<sup>100</sup> Six items, Cronbach’s  $\alpha$  = .90.

<sup>101</sup> Six items, Cronbach’s  $\alpha$  = .92.

<sup>102</sup> Fourteen items, Cronbach’s  $\alpha$  = .91.

the survey, but in the current study it was randomly assigned to appear at either the beginning or the end.<sup>103</sup>

For descriptive purposes, we explored demographic associations with court legitimacy. In this sample, the correlation between court legitimacy and participant age was not significant,  $r(466) = .07$ ,  $p = .12$ . Women ( $M = 4.64$ ,  $SD = 1.17$ ) viewed the courts as more legitimate than men ( $M = 4.41$ ,  $SD = 1.07$ ) did,  $t(464) = 2.17$ ,  $p = .030$ ,  $d = 0.20$ . White participants ( $M = 4.56$ ,  $SD = 1.13$ ) viewed the courts as more legitimate than non-White participants ( $M = 4.26$ ,  $SD = 1.07$ ) did,  $t(465) = 2.35$ ,  $p = .019$ ,  $d = 0.27$ .

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; sixteen items, Cronbach's  $\alpha = .87$ ).<sup>104</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.

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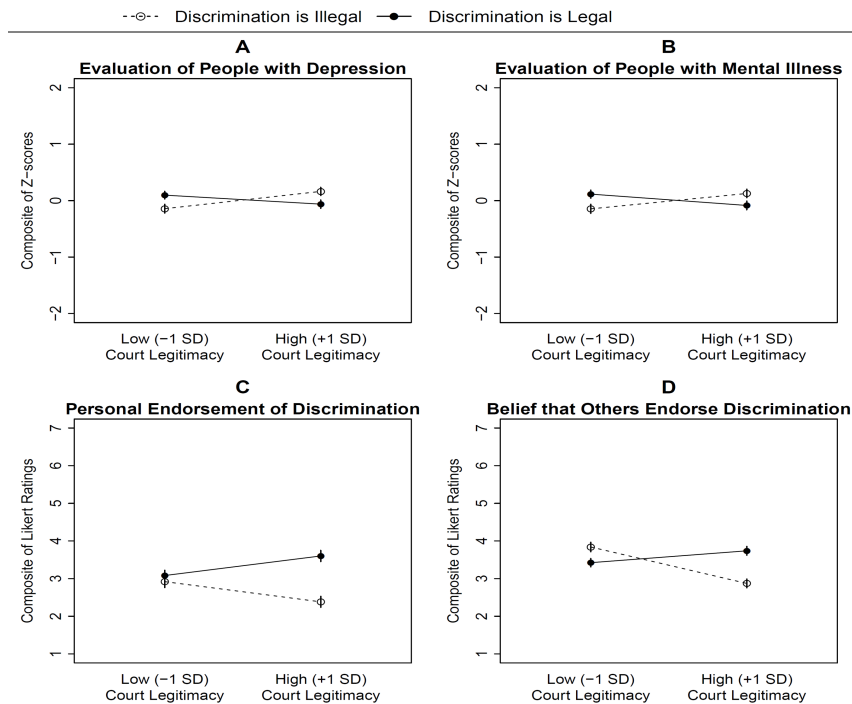
<sup>103</sup> The mean level of court legitimacy was not significantly different depending on whether it was measured before ( $M = 4.49$ ,  $SD = 1.07$ ) or after ( $M = 4.51$ ,  $SD = 1.17$ ) the court scenario,  $t(466) = 0.16$ ,  $p = .87$ ,  $d = 0.01$ . Also, the timing of the court legitimacy measure did not significantly moderate the results reported elsewhere.

<sup>104</sup> See generally Hart et al., *supra* note 95.

B. Results<sup>105</sup>

FIGURE 3. EFFECTS OF LEGALITY OF DISCRIMINATION IN STUDY 3

When discrimination was portrayed as illegal, participants who viewed courts as high in legitimacy evaluated people with depression and mental illness more positively, endorsed discrimination less, and believed that others endorsed discrimination less (pre-registered replication of the results in Figure 2). Participants were randomly assigned to be told that discrimination on the basis of mental illness was either legal or illegal. Among participants who generally viewed courts as legitimate, portraying discrimination as legal caused relatively negative evaluations of people with depression and other mental illnesses. Portraying discrimination as legal also caused more endorsement of discriminatory behavior among these participants. Error bars represent one standard error above and below the mean.



<sup>105</sup> Summary statistics and supplementary statistical analysis are included in an online appendix, available at <https://lawreview.uchicago.edu/sites/lawreview.uchicago.edu/files/SuppTables.pdf>.

TABLE 3: EFFECTS OF LEGALITY OF DISCRIMINATION IN STUDY 3

This table describes the effects of condition (discrimination portrayed as legal versus illegal) on evaluations and perceptions among people who perceived courts as high (1 SD above the mean) and low (1 SD below the mean) in legitimacy (preregistered replication of the results in Table 2). The letter *b* denotes the difference between responses under the conditions in the original units of the response scale, treating the illegal condition as the baseline. *SE* denotes the standard error of that difference estimate.  $\beta$  denotes a slope computed by standardizing the response variable and not the condition indicator variable.

	High (+1 SD) in Court Legitimacy				Low (-1 SD) in Court Legitimacy			
	<i>b</i>	<i>SE</i>	$\beta$	<i>p</i>	<i>b</i>	<i>SE</i>	$\beta$	<i>p</i>
Evaluation of people with depression	-0.23	0.11	-0.28	.035	0.24	0.11	0.29	.026
Evaluation of people with mental illness	-0.21	0.11	-0.25	.059	0.26	0.11	0.31	.020
Personal endorsement of discrimination	1.22	0.21	0.73	< .001	0.16	0.22	0.10	.45
Perception that "most people" support discrimination	0.87	0.17	0.64	< .001	-0.42	0.17	-0.31	.016

### 1. Manipulation check.

As before, participants in the illegal condition were significantly more likely to believe that it is currently illegal to discriminate on the basis of mental health history ( $M = 5.11$ ,  $SD = 1.82$ ) than were participants in the legal condition ( $M = 2.46$ ,  $SD = 1.58$ ),  $t(480) = 17.05$ ,  $p < .001$ .<sup>106</sup>

### 2. Primary outcomes.

Our primary hypothesis concerned the evaluation of people with a history of depression.<sup>107</sup> We once again fit linear regression models with terms for the legality manipulation, court legitimacy,

<sup>106</sup> In this study, the effectiveness of the manipulation was significantly moderated by perceived court legitimacy,  $b = 0.47$ ,  $SE = 0.16$ ,  $p = .003$ ,  $\beta = 0.22$ , such that participants who viewed the courts as highly legitimate were more extreme in their belief that the actual legality of discrimination matched the ruling in the scenario. However, participants across the spectrum of court legitimacy were robustly affected by the manipulation. For example, the effect of the manipulation was strong at one standard deviation below the mean of court legitimacy,  $b = 2.23$ ,  $SE = 0.22$ ,  $p < .001$ ,  $\beta = 1.03$ , and at one standard deviation above the mean,  $b = 3.16$ ,  $SE = 0.22$ ,  $p < .001$ ,  $\beta = 1.47$ .

<sup>107</sup> See Figure 3(A), "Evaluation of People with Depression."

and their interaction. Consistent with the previous study and our preregistered hypothesis, the interaction between condition and court legitimacy was significant,  $b = -0.23$ ,  $SE = 0.08$ ,  $p = .002$ ,  $\beta = -0.28$ .

As before, participants who viewed the court system as highly legitimate evaluated people with depression more negatively when discrimination was presented as legal (versus illegal). In contrast, participants who viewed the court system as low in legitimacy evaluated people with depression most favorably when discrimination was portrayed as legal.<sup>108</sup>

Participants also reported their evaluations of people with mental illnesses generally,<sup>109</sup> which followed the same pattern displayed by their attitudes toward people with a history of depression: a significant interaction between condition and court legitimacy,  $b = -0.24$ ,  $SE = 0.08$ ,  $p = .003$ ,  $\beta = -0.28$ .

### 3. 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.<sup>110</sup> Once again, we observed a significant interaction between condition and court legitimacy,  $b = 0.53$ ,  $SE = 0.15$ ,  $p < .001$ ,  $\beta = 0.32$ . For participants who viewed the court system as highly legitimate, presenting discrimination as illegal (versus legal) led them to rate discrimination as less desirable and less morally acceptable. 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.

Finally, participants also indicated the extent to which they believed that *other people* support discrimination.<sup>111</sup> The interaction between condition and court legitimacy was significant,  $b = 0.64$ ,  $SE = 0.12$ ,  $p < .001$ ,  $\beta = 0.48$ . 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. For participants who viewed the court system as less legitimate, the legality of discrimination had the opposite effect on their judgment of its popularity.

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<sup>108</sup> See Table 3 for key slopes at low and high levels of court legitimacy.

<sup>109</sup> See Figure 3(B), "Evaluation of People with Mental Illness."

<sup>110</sup> See Figure 3(C), "Personal Endorsement of Discrimination."

<sup>111</sup> See Figure 3(D), "Belief that Others Endorse Discrimination."

#### 4. Other results.

Again, we measured participants' evaluations 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>112</sup>

In order to address the possibility that our court legitimacy effects could be driven by social desirability, we measured participants' background propensities to respond in a socially desirable manner. In our preregistration, we indicated that we would estimate (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>113</sup> but social desirability did not significantly moderate the effect of the experimental manipulation in the same way that court legitimacy did.<sup>114</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

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<sup>112</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>113</sup>  $r(454) = .24$ ,  $p < .001$ .

<sup>114</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,  $b = -0.04$ ,  $SE = 0.18$ ,  $p = .82$ ,  $\beta = -0.03$ .

subset of the public 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 the mere tendency to give a 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 possibility that people used the discrimination case as their informational basis for deciding the legitimacy of the courts.

Thus, we conclude 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 expressive effects are possible—at least among people who tend to view the court system as high in legitimacy.

The effect size we observed is small according to conventional standards:<sup>115</sup> for example, among participants close to one standard deviation above the mean of court legitimacy, the legal regime shifted evaluations of people with depression and mental illness by approximately one quarter of the overall standard deviation of those evaluations. This shift is modest, but it would be surprising if a one-paragraph vignette shifted attitudes as much as other determinants of mental health attitudes (e.g., having a friend with depression<sup>116</sup>).

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<sup>115</sup> JACOB COHEN, *STATISTICAL POWER ANALYSIS FOR THE BEHAVIORAL SCIENCES* 12–13 (2d ed. 1988).

<sup>116</sup> For a review, see Shannon M. Couture & David L. Penn, *Interpersonal Contact and the Stigma of Mental Illness: A Review of the Literature*, 12 J. MENTAL HEALTH 291, 293–97 (2003).

## IV. 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 with mental health conditions more broadly. 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 regard courts as high in legitimacy. For individuals who view the courts as low in legitimacy, learning about the outcome of a court case shows no such effect, and in fact may have the opposite 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 Act of 1964, 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 Senator Williams 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>117</sup>

Certainly, proponents of the Civil Rights Act hoped that behavioral changes motivated by the threat of sanctions would eventually become internalized as attitude changes. Walter Reuther, president of the United Automobile Workers, expressed

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<sup>117</sup> *Civil Rights—Public Accommodations: Hearing on S. 1732 Before the S. Comm. on Commerce*, 88th Cong. 652 (1963) (statement of Sen. Williams).



the wish that civil rights legislation might one day become unnecessary because equality norms will have become so pervasive that nobody would think to discriminate in the first place.<sup>118</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 is long and slow, Allport posited, having “an eventual effect upon inner habits of thought and feeling.”<sup>119</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 level of enforcement is low and the material sanctions imposed are limited, antidiscrimination laws may still provide a plausible path to changing social attitudes, so long as people know about the legislation and buy into the moral authority of the 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>120</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 community.<sup>121</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>122</sup> This research raises the possibility that a legal victory

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<sup>118</sup> *Civil Rights: Hearings on Miscellaneous Proposals Regarding the Civil Rights of Persons Within the Jurisdiction of the United States Before Subcomm. No. 5 of the H. Comm. on the Judiciary*, 88th Cong. 1940 (1963) (written testimony of Walter P. Reuther, President, United Automobile Workers).

<sup>119</sup> ALLPORT, *supra* note 7, at 477.

<sup>120</sup> 576 U.S. 644 (2015).

<sup>121</sup> 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://perma.cc/PLM9-6LFV>.

<sup>122</sup> See, e.g., Jesús Gregorio Smith, *Gay Marriage and the Illusion of Equality*, RACISM REVIEW (Apr. 28, 2015), <https://perma.cc/HC3A-BL3J>:

[E]ven if marriage equality does in fact become a reality, issues of racism, sexism, ageism, homophobia, and body shaming continue to further marginalize

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. Thus, a victory on marriage may be about more than marriage: it may have an expressive dimension that changes attitudes toward group members more broadly.<sup>123</sup>

In a similar vein, the findings also underscore the potential usefulness of raising awareness about existing legal protections for marginalized groups. Many members of the public are unaware, for instance, that federal law regards people with clinical depression as having a mental health disability entitling them to protection under the ADA. Our findings suggest that informing people about existing legal protections could decrease stigma, including in areas of life not directly regulated by the legal regime in question. Of course, the effect of awareness-based interventions will depend on several factors, including the quality of the trainings or awareness campaigns and people's background levels of knowledge of the issue. We do not claim that every piece of antidiscrimination legislation, or the ADA specifically, carries the kind of expressive effect that our studies have documented. Rather, we view our studies as a useful demonstration that people's beliefs about the law can causally affect their prejudicial attitudes—a claim that requires experimentally manipulating legal regimes, as we have done here. A natural implication of this finding is that providing factual information about existing but underpublicized legal protections should reduce prejudicial attitudes among those who view the law as legitimate.

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

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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.

<sup>123</sup> Indeed, this possibility has been discussed by legal scholars and movement strategists. See, e.g., Kenji Yoshino, *A New Birth of Freedom?: Obergefell v. Hodges*, 129 HARV. L. REV. 147, 147 (2015) ("While *Obergefell*'s most immediate effect was to legalize same-sex marriage across the land, its long-term impact could extend far beyond this context."). See generally Kreitzer et al., *supra* note 33; Ofosu et al., *supra* note 35.

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 courts as legitimate moral authorities.

This finding further suggests that a prevalent kind of discrimination apologism is empirically unsound. We can again turn to the debate over the right to marry as an example. An argument frequently offered by religious conservatives was that a distinction could be drawn between endorsement of discrimination against LGBTQ+ individuals and personal animus or feelings of hatred.<sup>124</sup> Faith leaders often asserted that one could be against equal protection for LGBTQ+ individuals while still feeling the utmost respect and love for them.<sup>125</sup> 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. The predicted attitudinal shift was observed only among participants who view courts as high in legitimacy. This finding suggests that the law's moral authority is not assured. Rather, it is incomplete and at times precarious.

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<sup>124</sup> For instance, in calling for a constitutional amendment that would define marriage as between a man and a woman, President George W. Bush argued that denying same-sex couples the legal right to marry did not entail disrespect for LGBTQ+ individuals: "Our government should respect every person, and protect the institution of marriage. There is no contradiction between these responsibilities." He further insisted that the fight to restrict marriage to heterosexual couples should be carried out "with kindness and goodwill and decency." President Calls for Constitutional Amendment Protecting Marriage, WHITE HOUSE (Feb. 24, 2004), <https://perma.cc/5R8P-4P5X>.

<sup>125</sup> See, e.g., Ethics & Religious Liberty Commission, *Four Reasons Christians Should Still Oppose Same-Sex Marriage*, (June 11, 2021), <https://perma.cc/3FYB-6GU8> ("As Christians, we are called to love our gay and lesbian neighbors (John 14:34), which is why we must not and cannot support same-sex marriage.").

Previous research has demonstrated that members of society who become cynical and disillusioned do not take cues from the law to tell them what is right.<sup>126</sup> A robust literature illuminates 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 illegitimate, unresponsive, and ill equipped to ensure public safety.”<sup>127</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 a community.’”<sup>128</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, to engender such prejudicial attitudes by refusing to penalize discrimination), it may have less of an effect on those who are disillusioned with its moral authority. For these individuals, legally sanctioned discrimination may even increase sympathy for the targeted group.

#### B. Limitations and Future Directions

Previous research has made clear that there is potent public prejudice against people with mental illnesses, including depression, in the United States.<sup>129</sup> Nonetheless, 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 less politicized than race or sexual orientation. We hoped that

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<sup>126</sup> See Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L. J. 2054, 2071–79, 2083–89 (2017); David S. Kirk & Andrew V. Papachristos, *Cultural Mechanisms and the Persistence of Neighborhood Violence*, 116 AM. J. SOCIO. 1190, 1202–04 (2011); cf. Michael D. Reisig, Jason Bratton & Marc G. Gertz, *The Construct Validity and Refinement of Process-Based Policing Measures*, 34 CRIM. JUST. & BEHAV. 1005, 1023–24 (2007).

<sup>127</sup> Kirk & Papachristos, *supra* note 126, at 1191.

<sup>128</sup> *Id.* at 1192 (emphasis added).

<sup>129</sup> See Lasalvia et al., *supra* note 41, at 58; see also Brouwers et al., *supra* note 42, at 3; Hipes et al., *supra* note 42, at 22–23; Batastini et al., *supra* note 42, at 789–92.

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 reported here generalize to forms of discrimination about which people's prior views reflect strong political allegiances. Future studies should test whether a similar dynamic can be observed with regard to domains where attitudes are more politically polarized.

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 domains, such as discrimination against religious minorities, where participants' beliefs about legality are 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 cause 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.

In addition to focusing on mental health discrimination, our scenarios in Studies 2 and 3 exclusively featured a female plaintiff with a college degree named Amy. Her gender, education, and name may have shaped how participants regarded her mental illness. In addition, participants reported their attitudes both toward people with depression specifically and toward people with mental illness generally. It is possible that the latter attitudes were largely informed by the former, because depression was the only mental illness mentioned in the experimental procedure. The study results should not be taken as strong evidence that knowledge of the law would have similar effects for all mental health conditions.

Another limitation of this research is that we focused on explicit prejudicial attitudes as measured by self-report (e.g., feeling thermometers). We make no claim about whether implicit social

cognition—including implicit bias—is affected by beliefs about the legal status of discrimination. While understanding that 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>130</sup> In the same vein, it is an open question whether intergroup behaviors, and not just attitudes, shift in response to the law in the absence of sanctions. An area for future research is to investigate whether participants behave more warmly toward members of a group in informal social settings when they believe that formal discrimination against that group is illegal (versus legal).

There are several additional areas that future research should explore. One is why people differ in the extent to which they view the courts as legitimate authorities. Research on legal socialization suggests that trust in the law is a product of prior interactions with the legal authorities, 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>131</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>132</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 violating criminal laws).

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

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<sup>130</sup> Monteith & Pettit, *supra* note 39, at 486–89; cf. Nicolas Rüsch, Andrew R. Todd, Galen V. Bodenhausen, Manfred Olschewski & Patrick W. Corrigan, *Automatically Activated Shame Reactions and Perceived Legitimacy of Discrimination: A Longitudinal Study Among People with Mental Illness*, 41 J. BEHAV. THERAPY & EXPERIMENTAL PSYCHIATRY 60, 62–63 (2010).

<sup>131</sup> See TOM R. TYLER & RICK TRINKNER, WHY CHILDREN FOLLOW RULES: LEGAL SOCIALIZATION AND THE DEVELOPMENT OF LEGITIMACY 161–64, 170 (2017); 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 1, 8–9 (2019).

<sup>132</sup> Kirk & Papachristos, *supra* note 126, at 1204 (discussing how “negative interactions with the police and other institutions of the law as well as neighborhood structural conditions such as concentrated poverty” can result in legal cynicism).

have identified several possibilities—court decisions as indications of societal consensus, judges as experts on moral or factual matters, law qua law as authoritative—but our studies have not distinguished between them. Our results nonetheless suggest that the societal-consensus mechanism may not be sufficient to account for the shift in attitudes we observed. For example, in Studies 2 and 3, the effect of our manipulation on personal attitudes was at least as large as its effect on perceived societal consensus. If consensus were the mechanism, we would expect that a shift in the legal regime would change perceptions of others' attitudes more dramatically than individual personal attitudes.

Furthermore, the societal-consensus view does not obviously predict a weaker signaling effect among people who view courts as illegitimate. Court legitimacy might be a proxy for many views, including the view that judges are experts or that the law qua law is authoritative. Relatedly, a win for a plaintiff with depression could be taken as factual evidence against stereotypes suggesting that people with depression are unreliable, incompetent, or otherwise unfit for employment.<sup>133</sup> If prejudice against people with mental health conditions is driven in part by negative stereotypes, a ruling that is understood as providing information that counters those stereotypes could reduce prejudicial attitudes—and it might do so especially effectively among people who look to courts for guidance on factual matters. The finding that court legitimacy significantly moderates the expressive effect of law suggests that these explanations warrant more focused attention in future empirical work.

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 gompings Zorpies, what inferences will 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 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?

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<sup>133</sup> Na & Chasteen, *supra* note 40, at 259.

## CONCLUSION

An ongoing debate questions whether law can change prejudicial attitudes. Skeptics have long 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 by increasing inter-group contact or by making people observe descriptive norms that are then gradually internalized. In this Article, we tested 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.

Study 1 provided evidence, first, that people do draw inferences about the social statuses of novel groups when an unfamiliar society refuses to outlaw injurious behavior directed against group members. 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>134</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>135</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>136</sup> The Study 1 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.

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<sup>134</sup> See, e.g., Sunstein, *supra* note 14, 2043–44 (describing how laws concerning discrimination and animal rights can be understood as expressive). See generally Kahan, *supra* note 14 at 417 (recasting legal arguments about capital punishment, gun control, and hate crimes as "battles to control the *expressive capital* of the criminal law" (emphasis in original)).

<sup>135</sup> Sunstein, *supra* note 14, at 2022 (citing *Plessy*, 163 U.S. at 544).

<sup>136</sup> *Brown*, 347 U.S. at 494 & n.11 (collecting research) (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").



Studies 2 and 3 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. Importantly, this expressive effect was observed only among individuals who viewed 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 outcomes may have psychological consequences well beyond their official scope, including facilitating or inhibiting efforts to reduce personal prejudice.