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MORAL INTUITIONS AND ORGANIZATIONAL CULTURE

MILTON C. REGAN, JR.*

INTRODUCTION

Lawyers both shape and are shaped by the organizational environments in which they practice. They often play important roles in creating and operating ethics and legal compliance programs. Those programs in turn affect the milieu in which the lawyer must carry on her work. We can think of this milieu in a broad sense as an organization's culture. Many efforts to understand and respond to a succession of corporate scandals over the last few years have underscored the importance of organizational culture in shaping the behavior of individuals.[1] This focus reflects appreciation that even if an

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* Professor of Law, Georgetown University Law Center. My thanks to Carol Needham for inviting me to submit a paper based on my participation on the Association of American Law Schools panel in January 2007 that she organized. The panel served as the impetus for this article. I am grateful to Elizabeth Chambliss, Donald Langevoort, Susan Martyn, and John Mikhail for comments on an earlier draft.

This article is dedicated to the memory of Father Robert F. Drinan, S.J., whose moral intuitions never failed him.

1. *See, e.g.*, Lynne L. Dallas, *A Preliminary Inquiry Into the Responsibility of Corporations and Their Officers and Directors for Corporate Climate: The Psychology of Enron's Demise*, 35 RUTGERS L.J. 1 (2003); Christine E. Early, Kate Odabashian & Michael Willenborg, *Some Thoughts on the Audit Failure at Enron, the Demise of Andersen, and the Ethical Climate of Public Accounting Firms*, 35 CONN. L. REV. 1013 (2003); Ronald R. Sims & Johannes Brinkman, *Enron Ethics (Or: Culture Matters More than Codes)*, 45 J. BUS. ETHICS 243 (2003); William Arthur Wines & J. Brooke Hamilton III, *Observations on the Need to Redesign Organizations and to Refocus Corporation Law to Promote Ethical Behavior and Discourage Illegal Conduct*, 29 DEL. J. CORP. L. 43 (2003). A related concept is an organization's "ethical infrastructure." *See, e.g.*, Ann E. Tenbrunsel, Kristin Smith-Crowe & Elizabeth E. Umphress, *Building Houses on Rocks: The Role of the Ethical Infrastructure in Organizations*, 16 SOC. JUST. RES. 285, 286–87 (2003).

For elaboration of this concept as applied to law firms, see Elizabeth Chambliss, *The Nirvana Fallacy in Law Firm Regulation Debates*, 33 FORDHAM URB. L.J. 119 (2005); Elizabeth Chambliss & David B. Wilkins, *A New Framework for Law Firm Discipline*, 16 GEO. J. LEGAL ETHICS 335 (2003); Elizabeth Chambliss & David B. Wilkins, *The Emerging Role of Ethics Advisors, General Counsel, and Other Compliance Specialists in Large Law Firms*, 44 ARIZ. L. REV. 559 (2002); Elizabeth Chambliss & David B. Wilkins, *Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting*, 30 HOFSTRA L. REV. 691

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organization has adopted elaborate rules and policies designed to ensure legal compliance and ethical behavior, those pronouncements will be ineffective if other norms and incentives promote contrary conduct.

Enron, for example, had a supposedly state-of-the-art ethics code, risk management capability, and board of directors oversight process, all of which formally conveyed the importance of ethical behavior. The company also, however, provided lavish rewards for employees who could negotiate deals that resulted in immediate recognition of revenue and conducted a "rank and yank" personnel evaluation process that engendered brutal competition.[2] The result was a poisonous culture that spawned disdain for legal and accounting rules, as well as for any broader conception of ethics.

"Culture," as one set of scholars observes, "helps to establish what is considered legitimate or unacceptable in an organization."[3] In this respect, Enron's culture overwhelmed whatever formal ethics and compliance measures that it had adopted. Crucial in identifying a corporation's culture, suggests another observer, are:

> the employees' perceptions of the corporation's values—as reflected by the corporation's mission statement and code of ethics, the criteria for business decisions, the words and actions of leaders, the handling of conflicts of interest, the reward system, the guidance provided to employees concerning dealing with ethical issues, and the monitoring system.[4]

Amendments to the Federal Organizational Sentencing Guidelines in 2004 are consistent with a broad focus that looks beyond formal programs to more complex influences on behavior. They add to the criteria for an effective legal compliance and ethics program the requirement that an organization "promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."[5]

Responding to the call for creating and sustaining an ethical culture in organizations requires appreciating the subtle ways in which various characteristics of an organization may work in tandem or at cross-purposes in shaping behavior. The idea is to identify the influences likely to be most important, analyze how people are apt to respond to them, and revise them if

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(2002); Ted Schneyer, *A Tale of Four Systems: Reflections on How Law Influences the "Ethical Infrastructure" of Law Firms*, 39 S. TEX. L. REV. 245 (1998).

2. *See generally* BETHANY MCLEAN & PETER ELKIND, THE SMARTEST GUYS IN THE ROOM: THE AMAZING RISE AND SCANDALOUS FALL OF ENRON (2003).

3. LINDA KLEBE TREVIÑO & GARY RICHARD WEAVER, MANAGING ETHICS IN BUSINESS ORGANIZATIONS: SOCIAL SCIENTIFIC PERSPECTIVES 235 (2003).

4. Dallas, *supra* note 1, at 3.

5. U.S. SENTENCING GUIDELINES MANUAL § 8B2.1(a)(2) (2006); *see also* David Hess, Robert S. McWhorter & Timothy L. Fort, *The 2004 Amendments to the Federal Sentencing Guidelines and Their Implicit Call for a Symbiotic Integration of Business Ethics*, 11 FORDHAM J. CORP. & FIN. L. 725, 726 (2006).

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necessary so that they create the right kinds of incentives when individuals are deciding how to act.

This can be a tall order even if we assume that most behavior is the result of a deliberative process that weighs multiple risks and rewards. It is even more daunting if we accept the notion that conscious deliberation typically plays but a minor role in shaping behavior. A focus on what two scholars describe as "the unbearable automaticity of being" posits that "most of a person's everyday life is determined not by their conscious intentions and deliberate choices but by mental processes that are put into motion by features of the environment and that operate outside of conscious awareness and guidance."[6]

A growing body of scholarship, described as cognitive psychology or behavioral economics, has focused on various cognitive tendencies that reflect the operation of these non-conscious processes.[7] It has analyzed, for instance, how such certain biases can obscure morally salient features of a situation, and how they can undermine a sense of personal responsibility even when a person recognizes issues of moral concern.[8] Several scholars also have described how organizational settings can accentuate these propensities.[9] This work suggests

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6. John A. Bargh & Tanya L. Chartrand, *The Unbearable Automaticity of Being*, 54 AM. PSYCHOLOGIST 462, 462 (1999).

7. *See, e.g.*, MAX H. BAZERMAN, JUDGMENT IN MANAGERIAL DECISION MAKING (6th ed. 2006); CHOICES, VALUES, AND FRAMES (Daniel Kahneman & Amos Tversky eds., 2000); Donald C. Langevoort, *Behavioral Theories of Judgment and Decision Making in Legal Scholarship: A Literature Review*, 51 VAND. L. REV. 1499 (1998); Hugh Schwartz, *Behavioral Economics in a Nutshell: The Complicating But Sometimes Critical Considerations* (Jan. 20, 2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=960222; Cass R. Sunstein, *Introduction* to BEHAVIORAL LAW AND ECOMONICS 1 (Cass R. Sunstein ed., 2000).

8. *See, e.g.*, Mahzarin R. Banaji, Max H. Bazerman & Dolly Chugh, *How (Un)Ethical Are You?*, HARV. BUS. REV., Dec. 2003, at 56; Donald C. Langevoort, *The Epistemology of Corporate-Securities Lawyering: Beliefs, Biases and Organizational Behavior*, 63 BROOK. L. REV. 629 (1997); Donald C. Langevoort, *The Human Nature of Corporate Boards: Law, Norms, and the Unintended Consequences of Independence and Accountability*, 89 GEO. L.J. 797 (2001); Donald C. Langevoort, *Organized Illusions: A Behavioral Theory of Why Corporations Mislead Stock Market Investors (and Cause Other Social Harms)*, 146 U. PA. L. REV. 101 (1998); Donald C. Langevoort, *Where Were the Lawyers? A Behavioral Inquiry into Lawyers' Responsibility for Clients' Fraud*, 46 VAND. L. REV. 75 (1993); David J. Luban, *The Ethics of Wrongful Obedience*, *in* ETHICS IN PRACTICE: LAWYERS' ROLES, RESPONSIBILITIES, AND REGULATION 94 (Deborah L. Rhode ed., 2000); Deborah L. Rhode, *Moral Counseling*, 75 FORDHAM L. REV. 1317, 1321–25 (2006); Ann E. Tensbrunsel & David M. Messick, *Ethical Fading: The Role of Self-Deception in Unethical Behavior*, 17 SOC. JUST. RES. 223 (2004).

9. *See, e.g.*, CODES OF CONDUCT: BEHAVIORAL RESEARCH INTO BUSINESS ETHICS (David M. Messick & Ann E. Tensbrunsel eds., 1996); CONFLICTS OF INTEREST: CHALLENGES AND SOLUTIONS IN BUSINESS, LAW, MEDICINE, AND PUBLIC POLICY (Don A. Moore, Daylian M. Cain, George Lowenstein & Max H. Bazerman eds., 2005); SOCIAL INFLUENCES ON ETHICAL BEHAVIOR IN ORGANIZATIONS (John M. Darley, David M. Messick & Tom R. Tyler eds., 2001);

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that there are predictable patterns of both cognition and behavior that spring from non-conscious sources, and that these patterns can persist despite conscious awareness of their existence.

The durability of these patterns poses a challenge to any effort to foster an ethical organizational culture. We have to think carefully about when certain tendencies are likely to arise, what impacts they are likely to have, and if and how they might be amenable to influence. In some cases, we may want to counteract these tendencies. So, for instance, we may try to reduce the influence of self-serving rationalizations by ensuring that a dialogue includes contributions from people with no stake in the outcome of a project. In other cases, we may want to capitalize on a certain propensity. Thus, we may want to ensure that people in formal positions of authority, or in leadership positions within groups, model commitment to certain important values because people are likely to take their behavioral cues from such individuals. In still other cases, habits may stubbornly resist attempts to change them, so we need to think carefully how to work around especially tenacious behavior. In this way, work on cognitive psychology and behavioral economics can inform our attempts to promote legal compliance and ethical behavior.

In this article, I want to discuss another strand of research that is rooted in the study of non-conscious mental processes, and to consider its implications for ethics and culture in the organizational setting. This is work on the process that we use to identify and respond to situations that raise what we think of as distinctly moral questions. A growing body of research suggests that a large portion of this process involves automatic non-conscious cognitive and emotional reactions rather than conscious deliberation. One way to think of these reactions is that they reflect reliance on moral intuitions.[10] When such intuitions arise, we do not engage in moral reasoning in order to arrive at a conclusion. Instead, we do so in order to justify a conclusion that we have already reached. In other words, moral conclusions precede, rather than follow, moral reasoning.

If this research accurately captures much of our moral experience, what does it suggest about what is necessary to foster an ethical organizational culture? At first blush, the implications seem unsettling. The non-conscious realm is commonly associated with irrational and arbitrary impulses, and morality often is characterized as the hard-won achievement of reason over these unruly forces. If most of our moral judgments are the product of non-conscious processes, how can we hope to understand, much less influence, our moral responses? Are moral reactions fundamentally inscrutable and beyond appeals to reason? If reason has no persuasive force, does appreciation of the

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James A. Fanto, *Corporate Misbehavior by Elite Decision-Makers Symposium: Perspectives from Law and Social Psychology*, 70 BROOK. L. REV. 1165 (2005).

10. *See infra* note 34.

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non-conscious source of our moral judgments suggest that any effort to promote ethical conduct must rest on a crude behaviorism that manipulates penalties and rewards?

I believe that acknowledging the prominent role of non-conscious processes in shaping moral responses need not inevitably lead either to fatalism or Skinnerian behaviorism. Research has begun to shed light on how these processes operate. Related work has suggested how our moral responses may be rooted in human evolution. This perspective focuses on the ways in which our capacity for moral judgment is embedded in physical and mental processes that have provided an adaptive advantage in human evolution.[11] These bodies of research contribute to a richer portrait of human cognition and behavior that can be valuable in thinking about how to promote ethical awareness and conduct. As with work in cognitive psychology and behavioral economics, a more refined appreciation of human tendencies—both their operation and their possible origins—"may help us to better understand what educational and policy interventions may facilitate good conduct and ameliorate bad conduct."[12]

It is important at the outset to emphasize that gaining a more subtle understanding of the process of making moral judgments does not mean that this process should have any privileged status in our ethical deliberation. That we tend to reach such judgments in a certain way does not mean that we *should* do so. This "naturalistic fallacy" has been subject to trenchant criticism; I agree that we cannot derive an *ought* from an *is*.[13] How we are is not necessarily how we would like to be. Indeed, morality can be seen as an effort to bridge the gap. Nor do the possible evolutionary functions of cognitive and behavioral tendencies mean that we should automatically defer to them. Aside from the pitfalls of the naturalistic fallacy, those tendencies may have emerged and played a role at a stage in human evolution far different from our current circumstances. What once was functional may no longer be, and in fact may be dysfunctional in certain ways.

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11. *See, e.g.*, WILLIAM D. CASEBEER, NATURAL ETHICAL FACTS: EVOLUTION, CONNECTIONISM, AND MORAL COGNITION (2003); ROBERT H. FRANK, PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF THE EMOTIONS (1988); SHAUN NICHOLS, SENTIMENTAL RULES: ON THE NATURAL FOUNDATIONS OF MORAL JUDGMENT (2004); MATT RIDLEY, THE ORIGINS OF VIRTUE: HUMAN INSTINCTS AND THE EVOLUTION OF COOPERATION (1996); JAMES Q. WILSON, THE MORAL SENSE (1993). Many theorists in this camp tend to claim David Hume as an ancestor because of his emphasis on morality as the expression of an innate sentiment. *See* DAVID HUME, AN ENQUIRY CONCERNING THE PRINCIPLES OF MORALS (Kessinger Publishing 2004) (1751).

12. Stanford Encyclopedia of Philosophy, Moral Psychology: Empirical Approaches (Apr. 19, 2006), http://plato.stanford.edu/entries/moral-psych-emp/.

13. *See* DAVID HUME, A TREATISE OF HUMAN NATURE (Oxford Univ. Press 1978) (1888); GEORGE EDWARD MOORE, PRINCIPIA ETHICA (Cambridge Univ. Press 1966) (1903).

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What I *am* claiming is that, as Owen Flanagan puts it, "seeing clearly the kinds of persons we are is a necessary condition for any productive ethical reflection."[14] If there were such a thing as a normative theory of human movement, it would be futile if it exhorted us to fly.[15] Efforts to create an organizational culture that encouraged people to fly would be doomed as well. In thinking about ethics, we need to have a sense of what lies between simply accommodating what we tend to do and demanding that we fly.[16] Disciplines such as anthropology, evolutionary biology, cognitive science, primatology, and neurology all can offer guidance for this project, even as we remain free to decide what prescriptive significance to attach to their descriptive insights. Aside from enhanced self-understanding, these insights may suggest what kinds of efforts to promote ethical behavior are most likely to be successful because they either counteract or build on durable human tendencies.

In this article, I want to suggest one way in which research on moral intuitions might inform our understanding of the possibilities of and limits on efforts to foster an ethical organizational culture. This suggestion is cautious and tentative. I am well aware of the perils of attempting to extrapolate from other disciplines with which I am not intimately familiar, especially when those disciplines themselves are not characterized by consensus. I take some comfort from the fact that my conclusion is consistent with one prominent account of organizational life, even if I arrive at that conclusion by a different route. In any event, my main purpose is to stimulate further thought and to encourage research on the implications of the role of intuitions in ethical judgment and behavior.[17]

Before I begin, it is worth identifying some simplifying assumptions that I will adopt in the hope of sketching the broad outlines of lessons that research on moral intuitions might offer. These assumptions are embedded in the statement that I will focus on the implications of this research for attempts to

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14. OWEN FLANAGAN, VARIETIES OF MORAL PERSONALITY: ETHICS AND PSYCHOLOGICAL REALISM 16 (1991).

15. One common way of expressing this idea is that "ought implies can." *See* Walter Sinnott-Armstrong, *'"Ought" Conversationally Implies "Can"'*, 93 PHIL. REV. 249 (1984). While the maxim is not without controversy, it seems to capture at least a commonsensical, if not logical, insight. *See id.*

16. As Owen Flanagan suggests, a Principle of Minimal Psychological Realism provides: "Make sure when constructing a moral theory or projecting a moral ideal that the character, decision processing, and behavior prescribed are possible, or are perceived to be possible, for creatures like us." FLANAGAN, *supra* note 14, at 32.

17. Some scholars in business ethics have already begun to take work on moral intuitions into account. *See* Scott J. Reynolds, *A Neurocognitive Model of the Ethical Decision-Making Process: Implications for Study and Practice*, 91 J. APPLIED PSYCHOL. 737 (2006); Scott Sonenshein, *The Role of Construction, Intuition, and Justification in Responding to Ethical Issues at Work: The Sensemaking-Intuition Model*, ACAD. MGMT. REV. (forthcoming) (May 2006 manuscript on file with author).

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promote an "ethical organizational culture." Each of the terms in quotation marks is more complex than I will treat it in this article.

First, I will treat the "organization" as a single actor, when of course it can act only through numerous individuals. These individuals are unlikely to be unanimous about what courses of action the organization should pursue, and would face challenges in coordinating their efforts even if they were. Both formal and informal structures of power shape and constrain what any individual or group can do. Any initiative has to be undertaken on many fronts and contend with a multitude of attitudes and responses. Those who would have an organization attempt to encourage ethical behavior thus need to consider carefully the levers and avenues of influence to employ in this effort.

A second point, related to the first, is that I will speak of an "ethical" culture as a discrete state of affairs, presumably in contrast to one that is not ethical. This binary distinction does not hold up in the real world. Organizations typically are not either ethical or unethical. An organization is likely to speak in many voices with multiple messages. Some may explicitly relate to ethics; many others will not, but may indirectly communicate something about ethical expectations. There will be shades of emphasis and nuances of meaning, and no two individuals are likely to "read" the culture in exactly the same way. A more precise formulation thus may be that we should consider how organizations might heighten the importance of ethical considerations in their operations, rather than how they can move their cultures into the ethical category.

Finally, I will tend to portray organizational "culture" as a relatively monolithic phenomenon. This suggests a relative unity of purpose that distinguishes one organization from another. As Joanne Martin observes, however, this is only one of at least three different perspectives on organizational culture.[18] It represents an "integration perspective," which "sees consensus (although not necessarily unanimity) throughout an organization."[19] From this perspective, each element of the organization mutually reinforces the others.

By contrast, a "differentiation perspective" is sensitive to inconsistent interpretations within an organization.[20] From this perspective, consensus exists only on the subcultural level.[21] Subcultures "may exist in harmony, independently, or in conflict with each other."[22] They "are like islands of clarity in a sea of ambiguity."[23] Finally, a "fragmentation perspective"

18. *See* JOANNE MARTIN, ORGANIZATIONAL CULTURE: MAPPING THE TERRAIN 94 (2002).
19. *Id.*
20. *Id.*
21. *See id.*
22. *Id.*
23. MARTIN, *supra* note 18, at 94.

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emphasizes ambiguity, treating consensus as "transient and issue specific."[24] It conceptualizes the relationships among different constituencies and structures of the organization as neither clearly consistent nor clearly inconsistent.[25]

As Martin suggests, each of these perspectives provides insights on organizational life, and each has its blind spots. Some aspects of culture will be shared by most members, others will be interpreted by different groups, and still others "will be interpreted ambiguously, with irony, paradox, and irreconcilable tensions."[26] She suggests that researchers should attempt to use all three perspectives simultaneously because this will provide a richer set of insights than any single viewpoint.[27] My analysis will focus on organizations generally, rather than any particular one, but I acknowledge that any given organization will exhibit the complex and layered sets of meanings that Martin describes.

I. MORAL INTUITIONISM

A. *The Influence of Non-Conscious Cognition*

A substantial body of work in cognitive psychology and behavioral economics underscores that many of our cognitive and behavioral tendencies are the product of processes that occur outside our awareness.[28] Many of these tendencies are intensified in the organizational setting, with the result that people working in an organization face distinctive challenges in recognizing and acting upon ethical issues.[29]

Virtually any organization of significant size, for instance, will feature some fragmentation of knowledge. People who occupy different roles may have an understanding of some features of a situation but not all of them. Like the individuals in contact with various parts of the proverbial elephant, each may have a distinctive but incomplete belief about what is going on.

In addition, organizations typically are characterized by diffusion of responsibilities. Those who occupy different roles will tend to seek out only the information they regard as necessary for their work. Indeed, in a world of accelerating flows of information, doing so can become a necessity for being able to function. How many of us, for instance, hit the delete button after only a second's perusal of the content—or even subject heading—of all the emails we receive each day? This self-protective reflex may insulate people even

24. *Id.*

25. *See id.*

26. *Id.* at 120.

27. *Id.*

28. *See, e.g.*, TIMOTHY D. WILSON, STRANGERS TO OURSELVES: DISCOVERING THE ADAPTIVE UNCONSCIOUS (2002); Reynolds, *supra* note 17; Sonenshein, *supra* note 17.

29. *See infra* Part II.

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more deeply within the perspectives and attitudes of their roles, and may create a disincentive to seek information that does not seem directly relevant.

These propensities can complicate the ability to recognize the salience of ethical considerations in a given situation, as well as the willingness to act on the basis of them. Absent the rare entity that is thoroughly corrupt, most daily behavior can be interpreted in terms of organizational routines that raise no ethical issues. Identifying such issues therefore requires an individual to escape the interpretive grip of these routines in order to identify anomalies that may signal matters of ethical significance.

Acknowledging that a situation raises ethical concerns takes mental and emotional energy. It means that we cannot rely on our comfortable cognitive and behavioral routines. Instead, we have to focus more self-consciously on what the situation means and what it may require of us. It also means that we may have to question those with whom we have social relationships or defend ourselves to them, placing us both in the potentially awkward and stressful position of making ethical judgments about one another. All things considered, most people are inclined to avoid being in this situation if they can.

Several psychological mechanisms help us do so. In general, people rely on social and organizational "scripts" to organize experience and make it intelligible.[30] If a situation "involves a familiar class of problems or issues, it is likely to be handled via existing cognitive structures or scripts—*scripts that typically include no ethical component in their cognitive content.*"[31] In addition, people have a robust capacity for using "self-serving cognitive frames" in order to "attenuate or mitigate their perceptions of duty and obligation."[32] These frames enable them to maintain a positive self-image of themselves as "rational, blameless, and consistent decision makers."[33]

Recent research has focused on moral judgment in particular as one domain in which non-conscious processes play a prominent role.[34] It suggests

30. *See* Dennis A. Gioia, *Pinto Fires and Personal Ethics: A Script Analysis of Missed Opportunities*, 11 J. BUS. ETHICS 379, 385 (1992),

31. *Id.* at 388 (emphasis in original).

32. Roderick M. Kramer & David M. Messick, *Ethical Cognition and the Framing of Organizational Dilemmas: Decision Makers as Intuitive Lawyers*, *in* CODES OF CONDUCT, *supra* note 9, at 59, 69.

33. *Id.* at 70.

34. *See, e.g.*, Max Bazerman & Maharzin R. Banaji, *The Social Psychology of Ordinary Ethical Failures*, 17 SOC. JUST. RES. 111 (2004); Fiery Cushman et al., *The Role of Conscious Reasoning and Intuition in Moral Judgment*, 17 PSYCHOL. SCI. 1082 (2006); Joshua Greene, *From Neural "Is" to Moral "Ought": What are the Moral Implications of Neuroscientific Moral Psychology?*, 4 NATURE REV. NEUROSCIENCE 847 (2003); Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCHOL. REV. 814 (2001) [hereinafter Haidt, *The Emotional Dog and Its Rational Tail*]; Jonathan Haidt, *The Emotional Dog Gets Mistaken for a Possum*, 8 REV. GEN. PSYCHOL. 283 (2004); Jonathan Haidt & Fredrik Bjorklund, *Social Intuitionists Answer Six Questions about Moral Psychology*, *in* 3

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that only a small percentage of what we think of as judgments about situations with potential moral implications is the product of reasoned analysis.[35] Instead, most judgments reflect immediate intuitive reactions, which individuals then justify post hoc by recourse to what they regard as socially acceptable reasons.[36] On this account, a good portion of what we think of as moral reasoning therefore consists not of efforts to decide what to do, but of attempts to rationalize what we have already done or committed ourselves to do.

This research should give pause to those who are interested in promoting ethical organizational cultures. First, many ethical appeals are designed to affect conscious deliberation. A substantial body of scholarship in business and legal ethics, for instance, is devoted to clarifying morally relevant features of various situations, providing systematic ways of reasoning about those features, and justifying conclusions about how they should be reconciled.[37] Unless we engage people's intuitions, however, such ethical appeals may not have much effect on behavior. Rather, they may simply add to the repertoire of justifications that people are able to offer after they have already reached a conclusion. Second, to the extent that such ethical appeals do influence behavior rather than simply provide rationalizations, they may have to do so by triggering intuitions rather than by presenting convincing logical arguments. Engaging in the latter process is an activity that is probably more familiar to us than participating in the first.

Promoting ethical behavior in organizations thus would seem to require better understanding of potentially powerful non-conscious processes that shape our moral intuitions. An emerging body of work has tried to determine more precisely how non-conscious processes operate and the role they play in

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MORAL PSYCHOLOGY (Walter Sinnott-Armstrong ed., forthcoming) (Feb. 5, 2006 manuscript on file with author); Jonathan Haidt & Craig Joseph, *Intuitive Ethics: How Innately Prepared Intuitions Generate Culturally Variable Virtues*, DAEDALUS, Fall 2004, at 55; Jonathan Haidt & Craig Joseph, *The Moral Mind: How Five Sets of Innate Intuitions Guide the Development of Many Culture-Specific Virtues, and Perhaps Even Modules*, *in* 3 THE INNATE MIND (P. Carruthers, S. Laurence & S. Stich eds., forthcoming) (Dec. 21, 2006 manuscript on file with author) [hereinafter Haidt & Joseph, *The Moral Mind*]; Marc Hauser et al., *A Dissociation Between Moral Judgments and Justifications*, 22 MIND & LANGUAGE 1 (2007); John Mikhail, *Universal Moral Grammar: Theory, Evidence, and the Future*, TRENDS IN COGNITIVE SCI. (forthincoming 2007); Reynolds, *supra* note 17; Sonenshein, *supra* note 17.

35. *See, e.g.*, Cushman et al., *supra* note 34, at 1083.

36. *See, e.g.*, Reynolds, *supra* note 17, at 742

37. In business ethics, see, for example, ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH (Thomas Donaldson et al. eds., 7th ed. 2002). In legal ethics, see DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY (1988); WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS (1998). On the professions more generally, see ARTHUR ISAK APPLBAUM, ETHICS FOR ADVERSARIES: THE MORALITY OF ROLES IN PUBLIC AND PROFESSIONAL LIFE (1999).

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moral cognition.[38] This research is suggestive, rather than definitive. It holds some promise, however, for illuminating these processes, for rethinking some conventional assumptions about ethics, and for identifying ways in which we might try to strengthen or undermine non-conscious cognitive operations to enhance the likelihood of ethical behavior.

B. Elements of Moral Experience

One useful way of approaching this research is to begin with a widely-used framework that depicts moral experience as comprised of four elements: moral awareness, moral judgment or reasoning, moral motivation, and moral behavior.[39] In some cases, we can think of these elements as steps in a sequence that culminates in behavior. In other cases—those with which I am most concerned here—this framework describes a process in which the four elements appear to occur simultaneously.

The first element is moral awareness.[40] This is the point at which an individual recognizes that she is confronting a situation with a moral dimension.[41] This awareness is the product of an interaction between individual characteristics and contextual cues.[42] Different combinations of variables can stimulate or repress ethical awareness.[43] "[I]dentifying a moral issue" thus involves "an interpretive process wherein the individual recognizes that a moral problem exists in a situation, or that a moral standard or principle is relevant to the circumstances."[44]

Understanding moral awareness has been refined by appreciation of the extent to which people engage in the process of "sensemaking."[45] We all are confronted with multiple stimuli in our environment, and we must impose some structure upon it for it to "make sense."[46] We use various cues, patterns, routines, and scripts, typically created jointly with others, to help us accomplish this task. We still, however, may encounter stimuli that do not fit

38. *See, e.g.*, Cordelia Fine, *Is the Emotional Dog Wagging Its Rational Tail, or Chasing It? Reason in Moral Judgment*, 9 PHIL. EXPLORATIONS 83 (2006); Haidt & Bjorklund, *supra* note 34; Reynolds, *supra* note 17.

39. JAMES REST ET AL., POSTCONVENTIONAL MORAL THINKING: A NEO-KOHLBERGIAN APPROACH (1999); Linda K. Treviño et al., *Behavioral Ethics in Organizations: A Review*, 32 J. MGMT. 951, 952 (2006).

40. *See* Treviño et al., *supra* note 39, at 953.

41. *See id.*

42. *See id.* at 953–54.

43. *See id.* at 954.

44. *Id.* at 953.

45. On sense-making generally, see KARL E. WEICK, SENSEMAKING IN ORGANIZATIONS (1995); Karl E. Weick et al., *Organizing and the Process of Sensemaking*, 16 ORG. SCI. 409 (2005). For an application of the concept to ethics in the organizational context, see Sonenshein, *supra* note 17.

46. *See* Weick et al., *supra* note 45.

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comfortably into any of these structures. We may, for instance, encounter equivocality: "the existence of several different, simultaneous interpretations."[47] Or we may confront uncertainty: "a lack of information that makes constructing a plausible interpretation about a situation difficult."[48]

The relevant point about sensemaking for my purposes is that moral awareness is not simply a matter of seeing or failing to see moral issues that inhere in a situation independently of perception. Instead, it's the result of a process of active construction that involves complex interaction among an individual, her environment, and other people.

The second element in a framework of moral experience is moral judgment, or moral reasoning.[49] Once a person acknowledges the existence of a moral issue, she attempts to determine the most appropriate response to that issue. What demands does the situation make on her and/or others? What should she do in order to act morally? Much work in ethics that focuses on this element is prescriptive, attempting to provide either decision procedures or substantive principles for resolving moral questions.

On the descriptive level, Kohlberg's theory of stages of moral reasoning is perhaps the most prominent effort to describe various levels of competence in moral judgment.[50] That theory depicts advancement in moral reasoning as a process of appreciating a successively more abstract set of concerns that can be increasingly universalized (and thus includes a prescriptive element as well).[51] Other research has focused on what kinds of issues, circumstances, and individual values and characteristics tend to be correlated with different forms of moral reasoning.[52] In addition, an increasingly substantial body of work has examined various types of cognitive biases and self-protective mechanisms that can influence deliberation.[53]

The third element is moral motivation.[54] Having determined the ethically appropriate course of action, someone then must be motivated to act upon that conclusion. She must feel obligated to "tak[e] the moral course of action,"[55] and form the intention to do so.

Cognitive dissonance can be a source of moral motivation, as a person is moved to act in order to maintain consistency between her behavior and her

47. Sonenshein, *supra* note 17, at 7.

48. *Id.*

49. *See* Treviño et al., *supra* note 39, at 952.

50. LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES 43 & tbl. 1.2 (1984).

51. *See id.*

52. Treviño et al., *supra* note 39, at 956–57.

53. *Id.* at 958–59.

54. *Id.* at 954.

55. *Id.* at 960.

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sense of identity.[56] Emotion can play an even more important role in this process.[57] Guilt, shame, anger at injustice, and other emotions can provide the necessary motivation to follow through on the response that one has deemed appropriate.[58] Acknowledgement of the part that emotion can play in moral responses reflects a movement away from schools of thought that regard emotion as antithetical to principled moral action.[59]

The final element in the framework is moral behavior: "the transition from merely having moral intentions to actually engaging in moral action."[60] Individual characteristics such as the strength of a sense of personal responsibility and the capacity for self-regulation can influence whether this occurs.[61] So can environmental factors such as perceived support for and consequences of a course of behavior, the available pattern of rewards and punishments, and the conduct of others in a person's reference group.[62] In addition, unmet organizational goals can contribute to unethical behavior, especially when individuals are just slightly short of achieving a goal.[63]

Research has shed light on how organizational structure and culture can affect each of the elements in this analytical framework. It provides insights on how we might enhance ethical awareness, improve ethical reasoning, provide motivation to act ethically, and encourage following through on an intention to act. This work can help identify initiatives that focus on each separate element that forms the chain that culminates in behavior.

Current research, however, suggests that much, perhaps most, of our ethically relevant behavior is not the result of a sequence in which these steps occur one after the other. Rather, it is the product of a process of which we are not consciously aware. In this process, ethical awareness, judgment, motivation, and behavior occur virtually simultaneously. Moral reasoning, as one scholar puts it, "is not left free to search for truth but is likely to be hired out like a lawyer by various motives, employed only to seek confirmation of preordained conclusions."[64]

People in many cases therefore are not reliable reporters of the process in which they make moral judgments, but are unaware of that process as it is occurring. If these operations occur outside of our consciousness, are they also outside our control? Are most moral responses the product of a process that

56. *Id.* at 962–63.

57. Treviño et al., *supra* note 39, at 964.

58. *Id.*

59. *Id.*

60. *Id.* at 965.

61. *Id.*

62. Treviño et al., supra note 39, at 965–68.

63. *Id.* at 965; Maurice E. Schweitzer, Lisa Ordóñez & Bambi Douma, *Goal Setting as a Motivator of Unethical Behavior*, 47 ACAD. MGMT. J. 422, 423 (2004).

64. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 822.

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occurs in a "black box" inaccessible to our understanding? If so, the prospects for promoting ethical behavior, much less something as ambitious as constructing an ethical organization culture, seem limited.

Work in a range of fields, however, has begun to explore more closely the non-conscious moral judgment process, and to provide plausible accounts of how it operates.[65] This work has not converged on a single explanation, but it does offer many complementary insights. These deal with the dynamics and logic of the process, its possible evolutionary significance, and its interaction with more self-conscious moral reasoning. As I will suggest, from this work we also can make at least some preliminary observations about how to take this non-conscious process into account in attempting to foster an ethical organizational culture.

One common way to characterize the process in which we are interested is as the operation of intuition.[66] Intuitions seem suddenly just to appear in consciousness, without prior deliberation. They represent an immediate judgment about a situation, which often is accompanied by a particular emotion. As Jonathan Haidt describes it, a moral intuition is "the sudden appearance in consciousness, or at the fringe of consciousness, of an evaluative feeling (like-dislike, good-bad) about the character or actions of a person, without any conscious awareness of having gone through steps of search, weighing evidence, or inferring a conclusion."[67] Thus, "[w]e see an act of violence, or hear about an act of gratitude, and we experience an instant flash of evaluation, which may be as hard to explain as the affective response to a face or a painting."[68] This immediate reaction may be followed by a search for reasons to justify that judgment either to oneself or to others.[69] The response itself, however, does not involve what we conventionally regard as reasoning.

Haidt emphasizes that distinguishing between intuition and reasoning is not the same as distinguishing between emotion and cognition. "Intuition, reasoning, and the appraisals contained in emotions," he maintains, "are all forms of cognition."[70] Intuition is the form that occurs effortlessly, "such that the outcome but not the process is accessible to consciousness," while

65. *See supra* note 34 and accompanying text.

66. Not all scholars who recognize the role of non-conscious processing in producing moral responses would necessarily frame such processing precisely specifically as the operation of intuitions—at least insofar as that formulation suggests that perception without mental operations serves as the immediate basis for moral judgments. For some scholars, that characterization seems to neglect the "computational" role of the mind in employing structures to translate stimuli into judgments that incorporate moral concepts. *See, e.g.*, Mikhail, *supra* note 34, at 4 (stating that "a simple perceptual model, such as the one implicit in Haidt's influential model of moral judgment, is inadequate for explaining" how moral intuitions arise).

67. Haidt & Bjorklund, *supra* note 34, at 7 (emphasis removed).

68. *Id.*

69. *Id.* at 8.

70. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 818.

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reasoning "occurs more slowly, requires some effort, and involves at least some steps that are accessible to consciousness."[71]

Intuition collapses the four stages that I have described into one. A person simultaneously: (1) perceives that a situation has ethical significance, (2) arrives at a judgment about right and wrong with respect to it, (3) experiences an emotion that motivates her to form an intention to respond in a certain way, and (4) is moved to behave in accordance with that intention. The perception of the situation is holistic, not analytic.

C. *The Social Intuitionist Model*

Jonathan Haidt and Fredrik Bjorklund offer a "social intuitionist" model containing six links that purport to capture the process of non-conscious moral judgment.[72] First is intuitive judgment, which involves a close connection between visceral reaction and conscious assessment.[73] Some feature of the situation elicits an immediate response that provokes a moral judgment.[74] When, for instance, witnessing or hearing about the behavior of another, a "flash of feeling" first occurs.[75] This tends to lead to moral judgment: conscious praise or blame of the behavior, including a belief in its rightness or wrongness.[76] "These flashes of intuition are not dumb; as with the superb mental software that runs visual perception, they often hide a great deal of sophisticated processing occurring behind the scenes."[77]

Scott Reynolds has suggested a neurocognitive explanation of this process.[78] It begins with the claim that humans rely on both conscious and non-conscious processing of information to make sense of their environment.[79] Intuition reflects the operation of non-conscious processing, which is associated with specific regions of the brain.[80] Neurons receive a stimulus from the environment and transmit electrochemical signals that form a neural pattern unique to that stimulus.[81] The brain then compares this pattern against

71. *Id.*
72. Haidt & Bjorklund, *supra* note 34, at 2.
73. *Id.* at 7.
74. *Id.*
75. *Id.*
76. *Id.*
77. Haidt & Bjorklund, *supra* note 34, at 8.
78. Reynolds, *supra* note 17, at 737. Reynolds's account builds on "connectionist" theory, which focuses on the functions and activity of "the neuron, the fundamental unit of the brain." *Id.* at 738; *see also* Matthew D. Lieberman, *Intuition: A Social Cognitive Neuroscience Approach*, 126 PSYCHOL. BULL. 109 (2000). *See generally* CASEBEER, *supra* note 11, at 73–125; PAUL M. CHURCHLAND, THE ENGINE OF REASON, THE SEAT OF THE SOUL: A PHILOSOPHICAL JOURNEY INTO THE BRAIN 123–50 (1995).
79. Reynolds, *supra* note 17, at 739.
80. *Id.* at 738.
81. *Id.*

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existing base patterns, or prototypes, which can represent "sounds, language, objects, scenes, situations, concepts, and even complex social interactions."[82]

Prototypes are multi-dimensional, drawing on all five senses. The prototype of an object, for instance, can indicate the contexts in which that object is found and the sensory stimuli associated with it, while the prototype of a scene "could incorporate information about the season in which it occurs or the people who usually are involved."[83] To the extent that a pattern matches a prototype, the relevant stimuli are presented to consciousness in terms of that prototype.[84] This allows individuals to recognize elements of the environment with minimal cognitive effort.[85]

Most relevant for our purposes, prototypes can include ethically significant patterns.[86] Ethical prototypes exist for situations such as bribery, fraud, sexual harassment, lying, and the like.[87] These prototypes include "normative evaluations and prescriptive recommendations" that guide the individual's response to the situation.[88] "For instance, a bribery prototype not only describes what a prototypical bribery situation looks like, but also indicates that such situations are viewed by society as ethically abhorrent and that the ethically acceptable behavior is to deny the bribe."[89] Ethical prototypes therefore "are dynamic constructs holding descriptive, evaluative, and prescriptive information in one configuration of neural network signals."[90]

This process constitutes a rapid form of information processing that requires a low level of our active attention. Only when stimuli do not match our available prototypes do we engage in a more active, conscious cognitive process. The latter process does not just involve pattern-matching, but is capable of using abstract rules to arrive at judgments. When we rely on it, we are aware that we are engaged in a deliberative activity that relies on tools such as logic and ethical theories.

The second link in Haidt and Bjorklund's social intuitionist model is the "[p]ost-[h]oc reasoning link."[91] They define reasoning as mental activity that involves at least two steps that are performed consciously.[92] Reason conventionally is described as consisting of steps such as searching for relevant

82. *Id.* at 738.
83. *Id.* at 739.
84. Reynolds, *supra* note 17, at 739.
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. Reynolds, *supra* note 17, at 739.
90. *Id.*
91. Haidt & Bjorklund, *supra* note 34, at 8.
92. *Id.* To say that it is done consciously "means that the process is intentional, effortful, and controllable, and that the reasoner is aware that it is going on." Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 818.

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evidence, weighing it, coordinating evidence with theories, and reaching a decision.[93] Social intuitionist theory argues that moral reasoning typically occurs after a moral judgment is made and that it involves a post hoc search for arguments to support that judgment.[94] This search does not lead to the judgment, in other words, but follows from it. As Haidt suggests, when this occurs,

> what people are searching for is not a memory of the actual cognitive processes that caused their behaviors, because these processes are not accessible to consciousness. Rather, people are searching for plausible theories about why they might have done what they did. . . . The search is likely to be a one-sided search of memory for supporting evidence only.[95]

In some cases, it may be easy for us to articulate why we have judged behavior to be right or wrong. In other cases, it may take awhile, as we search for reasons that seem to account for our reaction. In still other cases, when pressed for an explanation of or justification for our judgment, we may not be able to provide a coherent one. Haidt describes this phenomenon as being "morally dumbfounded"[96] Even when presented with arguments for the opposite side in this situation, people typically will not change their initial position.[97]

Thus, "our conscious verbal reasoning is in no way the command center of our actions; it is rather more like a press secretary, whose job is to offer convincing explanations for whatever the person happens to do."[98] This characterization echoes Hume's pronouncements that "[r]eason is . . . the slave of the passions,"[99] and that morality is "more properly felt than judg'd of . . . ."[100]

Support for the view that we typically use reason to support our intuitive conclusions comes from research on motives that bias and shape reasoning.[101] The first group of motives, "relatedness motives," shapes judgments in accordance with a desire for harmony and agreement with others.[102] More specifically, we are motivated to agree with our friends and those with whom we expect to have some interaction.[103] Haidt suggests that this makes sense

93. Haidt & Bjorklund, *supra* note 34, at 8.

94. *Id.*

95. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 822.

96. *Id.* at 817 (quoting Jonathon Haidt et al., *Moral Dumbfounding: When Intuition Finds No Reason* (2000) (unpublished manuscript, University of Virginia)).

97. *Id.*

98. Haidt & Bjorklund, *supra* note 34, at 9.

99. HUME, *supra* note 13, at 462.

100. *Id.* at 522.

101. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 820.

102. *Id.* at 821.

103. *Id.*

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from an evolutionary perspective—"it would be strange if our moral judgment machinery was designed principally for accuracy, with no concern for the disastrous effects of periodically siding with our enemies and against our friends."[104]

A second set of motives is "[c]oherence" motives.[105] These are activated by the desire to avoid or resolve cognitive dissonance.[106] We often reason defensively, seeking to align beliefs and behavior in an integrated and consistent self-image.[107] Furthermore, our desire to believe that we live in a world in which people get what they deserve can lead us to express moral judgments that confirm this belief.[108]

Both types of motives move us generally to seek out evidence that supports our positions and commitments, and to minimize evidence that undermines it.[109] We may depart from this tendency in limited circumstances when we have adequate time and reasoning ability, are motivated to be accurate, have no prior judgment to justify, and when no situational cues trigger relatedness or coherence motivations.[110] Most of the time, however, we engage in post hoc reasoning that "is heavily marred by the biased search only for reasons that support one's already-stated hypothesis."[111]

The third link in the social intuitionist model is the "[r]easoned [p]ersuasion" link.[112] This link introduces the "social" element into the model.[113] "People love to talk about moral questions and violations," communicating their moral judgments to others in an effort to reach some consensus on standards of conduct.[114] Such a process is adaptive because it enables individuals to coordinate their actions and to cooperate with others.[115] People engaged in this process are potentially amenable to persuasion by the arguments of others; in this respect genuine moral reasoning can occur that is not directed simply toward justification of pre-existing judgments.[116]

This process of persuasion, however, does not necessarily operate through logic. "Because moral positions always have an affective component to them," Haidt argues, reasoned persuasion may work "not by providing logically

104. *Id.*
105. *Id.*
106. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 821.
107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.* at 822.
111. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 818.
112. Haidt & Bjorklund, *supra* note 34, at 9.
113. *Id.*
114. *Id.*
115. *Id.* at 10. On the evolutionary benefits of cooperation, see ROBERT H. FRANK, PASSIONS WITHIN REASON: THE STRATEGIC ROLE OF EMOTIONS (1988); RIDLEY, *supra* note 11.
116. Haidt & Bjorklund, *supra* note 34, at 10.

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compelling arguments but by triggering new affectively valenced intuitions in the listener."[117] Thus, "If Saddam Hussein is Hitler, it follows that he must be stopped. But if Iraq is Vietnam, it follows that the United States should not become involved."[118]

As long as a person is at least somewhat open to persuasion by another, there is the chance that the two may reach a better conclusion than either could have done on his or her own.[119] While we are bad at questioning our own assumptions and judgments, people do this for us in moral conversation.[120] Thus, the social intuitionist model "gives moral reasoning a causal role in moral judgment, but only when reasoning runs through other people."[121] This link in the model reflects the view that "moral judgment is not just a single act that occurs in a single person's mind but is an ongoing process, often spread out over time and over multiple people. Reasons and arguments can circulate and affect people . . . ."[122]

The fourth, "[s]ocial [p]ersuasion," link reflects the ways in which the mere behavior of others, unaccompanied by dialogue, can influence our moral judgments.[123] We look to others for cues to interpret the meaning of a situation, especially when it is ambiguous.[124] As Haidt and Bjorklund describe the basis for this process of unconscious influence,

> Only human beings cooperate widely and intensely with non-kin, and we do it in part through a set of social psychological adaptations that make us extremely sensitive to and influenceable by what other people think and feel. We have an intense need to belong and to fit in . . . , and our moral judgments are strongly shaped by what others in our "parish" believe, even when they don't give us any reasons for their beliefs.[125]

"These four links form the core of the social intuitionist model."[126] That model posits that we typically engage in moral reasoning after our judgments have been formed, and that we engage in that exercise in order to justify, rather

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117. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 819. Haidt and Bjorklund offer the example of someone who argues against the practice of female genital alteration by proclaiming: "This is a clear case of *child abuse*. It's a form of *reverse racism* not to *protect* these girls from *barbarous* practices that *rob* them for a lifetime of their *God-given right* to an *intact body*." Haidt & Bjorklund, *supra* note 34, at 10 (emphasis in original). Each italicized term is an attempt to trigger a different flash of intuition in the listener. *Id.*

118. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 825.

119. Haidt & Bjorklund, *supra* note 34, at 11.

120. *Id.*

121. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 819.

122. *Id.* at 828.

123. Haidt & Bjorklund, *supra* note 34, at 10.

124. *Id.* at 11.

125. *Id.* (internal citation omitted); *see also* RIDLEY, *supra* note 11, at 184 (stating that imitation may constitute rational reliance on the accumulated wisdom of others).

126. Haidt & Bjorklund, *supra* note 34, at 11.

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than arrive at, those judgments.[127] At the same time, however, moral reasoning between and among people can lead to new judgments, rather than simply confirm pre-existing ones.[128] When it occurs, this process may work mainly by triggering intuitions in others, rather than through logical persuasion.[129]

While the model regards these links as a description of the vast majority of moral judgments that people make, it acknowledges that people sometimes may change their judgments by engaging in private reasoning.[130] The model therefore includes two additional links to capture this process, which may occur "somewhat rarely outside of highly specialized subcultures such as that of philosophy, which provides years of training in unnatural modes of human thought."[131]

Link five is "[r]easoned [j]udgment."[132] In this case, a person uses logic to override her initial intuition and arrive at a different conclusion.[133] People may attempt, for instance, to arrive at moral judgments by reasoning from first principles.[134] These judgments meet with great resistance, however, if they conflict with strong moral intuitions.[135] The process of reasoned judgment may operate mainly when an initial intuition is weak and a person's moral reasoning capabilities are high.[136]

The sixth link consists of "[p]rivate [r]eflection."[137] In the course of deliberating on a situation, a person may trigger a new intuition that contradicts an original intuitive judgment.[138] Role-playing can be an effective method of activating new intuitions; "[s]imply by putting yourself into the shoes of another person you may instantly feel pain, sympathy, or other vicarious emotional responses."[139] A person may choose which intuition to honor by applying a rule or principle.[140] Perhaps more commonly, someone may choose the intuition that seems strongest and most apt; "ultimately the person decides on a feeling of rightness, rather than a deduction of some kind."[141]

An emerging body of research thus suggests that our default method of perceiving ethical issues and making ethical judgments may be non-conscious

127. *Id.* at 8.
128. *Id.* at 11.
129. *Id.* at 10.
130. *Id.* at 11–12.
131. Haidt & Bjorklund, *supra* note 34, at 12.
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.*
136. Haidt & Bjorklund, *supra* note 34, at 11–12.
137. *Id.* at 12.
138. *Id.*
139. *Id.*
140. *Id.*
141. Haidt & Bjorklund, *supra* note 34, at 13.

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information processing that generates intuitions. Only when patterns of stimuli do not match our available prototypes does more deliberate self-conscious reasoning swing into action.

Some scholars have recently has suggested that, in some circumstances, moral reasoning may play a more influential role in producing moral judgments than social intuitionists claim—that reasoning is not limited mostly to justifying judgments after they have been made.[142] Joshua Greene and colleagues, for instance, argue for a "synthetic theory of moral judgment," in which both emotional intuitions and abstract reasoning can play a role in different circumstances.[143] This model "stand[s] in tension with the social intuitionist claim that in nearly all cases moral judgments are more akin to perception than episodes of reasoning or reflection."[144] At the same time, they acknowledge that a focus on the role of intuitions represents an important corrective to traditional conceptions of moral judgment that define it solely in terms of cognition untainted by emotion.[145]

Cordelia Fine points to studies that indicate that in some instances, certain factors may disrupt the connection between intuition and judgment in people who tend to evaluate others on the basis of stereotypes.[146] The desire to be accurate, some dependence on the person being judged, and the belief that stereotyping is unacceptable all can inhibit the activation and application of stereotypes.[147]

Experiments indicate that resistance to stereotyping in such instances requires a more than minimal amount of "attentional resources," which suggests the operation of controlled, effortful moral reasoning prior to the formation of a judgment.[148] Personal motivations and values therefore may prompt the use of more involved deliberation that prevents or limits the operation of automatic responses.[149]

If such factors can provide the opportunity for moral reasoning to play a causal role in judgments, it is possible that even intuitive reactions may represent the product of prior moral reasoning that has become "automatized."[150] Reasoning may be informed by personal aspirations or

142. Fine, *supra* note 38; David A. Pizarro & Paul Bloom, *The Intelligence of Moral Intuitions: Comment on Haidt*, 110 PSYCHOL. REV. 193 (2003).

143. Joshua D. Greene et al., *The Neural Bases of Cognitive Conflict and Control in Moral Judgment*, 44 NEURON 389, 397 (2004).

144. *Id.*

145. *Id.* at 389, 396–97.

146. Fine, *supra* note 38. For an account of the way in which such stereotyping can occur rapidly and non-consciously, see Dolly Chugh, *Societal and Managerial Implications of Implicit Social Cognition: Why Milliseconds Matter*, 17 SOC. JUST. RES. 203 (2004).

147. Fine, *supra* note 38, at 87.

148. *Id.*

149. *See id.*

150. *Id.* at 95.

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commitments to certain values that motivate someone to make the cognitive effort required to resist the influence of automatic non-conscious reactions.[151] To the extent that judgment and behavior is habitually shaped by these aspirations or commitments, they may eventually become sufficiently durable that they are triggered by the non-conscious processing that generates intuitions.

This account seems plausible. Think, for instance, of sexual harassment in the workplace. A generation ago, certain behaviors of men toward women that we now think of as offensive were regarded by many as unexceptional and perhaps inevitable. Such behavior triggered little awareness of harm, and minimal moral disapproval. In the intervening years, however, there has been a self-conscious effort to illuminate the injuries both to psyche and career that women can suffer because of certain sexually-charged behavior. We may now be moving toward a point when such behavior triggers an immediate reaction of disapproval and disgust. In other words, we may be approaching the point at which certain conduct elicits distinct moral intuitions. Those intuitions simultaneously shape our perception—we now "see" sexual harassment where we did not before—as well as our evaluation of what we perceive.

In this way, the campaign to raise awareness of the various behavioral forms that sexual harassment can take may reflect the generation of a new moral prototype. It began with an effort at reasoned persuasion. That effort undoubtedly sought to trigger existing intuitions. It also, however, appealed at least in part to the conscious and deliberate information processing system that relies on logic and principles, such as the notion of equality. There followed a stage in which people whose consciousness was evolving on the issue deliberately and self-consciously began to categorize certain behavior as harassment. This would involve, for instance, the disruption of otherwise automatic tolerant reactions to such behavior. The most durable foundation for behavior change, however, will come when people automatically characterize conduct as harassment without an intervening self-conscious step.

If this story is right, it suggests that intuitions are not necessarily irreducible intractable phenomena, but may be amenable to deliberate revision and construction in some cases. Fine suggests that this may occur when "the individual is motivated to form accurate judgments, and has the attentional resources available to do so."[152] We can accept this amendment to the social intuitionist model while still acknowledging that moral judgments may be the product of automatic intuitions far more than most people realize.[153]

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151. *Id.* at 94–95.

152. Fine, *supra* note 38, at 97.

153. Indeed, Haidt would agree with Fine to a certain extent: "The reasoning process in moral judgment may be capable of working objectively under very limited circumstances: when the person has adequate time and processing capacity, a motivation to be accurate, no a priori

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In sum, research indicates that, despite their non-conscious origins, we need not regard moral intuitions as beyond our understanding or influence. The reasoned persuasion link of Haidt's social intuitionist model provides a role for dialogue in subjecting intuitions to scrutiny and leaving us open to the possibility of changing our moral judgments. He believes that such dialogue is most likely to have this effect when one person is able to trigger alternative intuitions in another, but he also acknowledges the possibility that appeals to logic may be influential in some cases.[154]

Furthermore, Fine suggests that intuitions themselves may be the product of previous conscious processes that relied on deliberate reasoning, whose outcomes eventually are expressed in automatic reactions.[155] People may be motivated to engage in such reasoning rather than be guided by intuitions if they aspire to moral responses that are more consistent with the values to which they subscribe.[156] Other motivations also may make people willing to activate a conscious process of moral judgment.[157] If a person has the opportunity to muster the cognitive resources to engage in this activity, her moral responses will result from deliberate moral reasoning.

What are the implications of this model for organizational culture? As Treviño, Weaver, and Reynolds suggest, "[I]t seems unlikely that moral intuitions specifically about some of the ethical issues that occur in complex organizations are all, or entirely, formed during early periods of life. Thus, researchers might ask whether and how the social context of organizational life influences moral intuition."[158] What, if any, link might there be between the operation of moral intuitions and the behavior of people within organizations?

There has been little sustained attention to this question thus far. Treviño, Weaver, and Reynolds, for instance, opine that it would be useful to explore whether "social learning processes (e.g., behavior modeling by others at work), or successful opportunities for moral behavior, build up a repertoire of affectively supported moral intuitions[.]"[159] Reynolds suggests that in some cases, managers may have "deeply engrained prototypes" about moral dilemmas that do not reflect what the organization regards as appropriate.[160] In these instances, he argues, organizations may want to use role-playing and small group discussions to "draw [prototypes] out of nonconscious processing"

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judgment to defend or justify, and when no relatedness or coherence motivations are triggered." Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 822.

154. Haidt & Bjorklund, *supra* note 34, at 10–12.

155. Fine, *supra* note 38, at 86–87.

156. *Id.* at 87.

157. *Id.*

158. Treviño et al., *supra* note 39, at 961.

159. *Id.*

160. Reynolds, *supra* note 17, at 745.

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so that they can be critically evaluated.[161] In addition, organizations will need to provide new prototypes for newly emerging ethical situations, and expose managers to them regularly.[162] Finally, organizations should make available general rules or guidelines that can guide managers' decision-making when they rely on more conscious deliberative reasoning.[163]

In the next section, I will suggest how the work on moral intuitions might inform efforts to promote an ethical culture within an organization. I will not offer specific programs or techniques; my focus instead will be on the general form that such efforts might take.

II. THE ORGANIZATIONAL SETTING

A. *The Power of Prototypes*

Several features of modern organizational life that seem relevant to the work on moral intuitions are the accelerating pace and scope of business operations, the frequency with which people confront novel situations, and the need for rapid decision-making. As Scott Sonenshein observes, "Several accounts portray managerial work as one in which quick reactions are needed, and where managers use experience, such as pattern-matching to a pre-existing category."[164] This suggests that it may be difficult regularly to make available the amount of attentional resources necessary to use deliberate reasoning to shape judgment and behavior. The mental process instead resembles non-conscious neurocognitive operations in which a person compares patterns of stimuli with pre-existing prototypes and activates conscious processes only when there is no match between them. This "[l]ow effort cognitive system[]"[165] seems suited for dealing with the barrage of stimuli that managers receive.

Scott Reynolds underscores that "[t]he business environment changes quickly, and managers often operate in new contexts where norms have yet to be established and therefore prototypes are scarce."[166] He suggests, however, that the result is that managers need regularly to "rely on their higher order conscious reasoning skills."[167] This seems right insofar as it recognizes that managers may not have moral prototypes readily accessible in novel situations, and that inducing moral responses in such situations requires stimulating deliberate moral reasoning.

161. *Id.*
162. *Id.*
163. *Id.*
164. Sonenshein, *supra* note 17, at 23 (citations omitted).
165. *Id.*
166. Reynolds, *supra* note 17, at 745; *see also* Chugh, *supra* note 146.
167. Reynolds, *supra* note 17, at 745.

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Managers are likely, however, to have *non-moral* prototypes available for use in these situations that emphasize practical business considerations. Research indicates that the default perceptual framework that people use in the work setting is less likely to include moral concerns than the one that they use outside of work.[168] Other research indicates that experienced managers are less likely to frame a situation in moral terms than are less experienced ones.[169] The reason is that "experienced business practitioners are more likely to possess well-developed business-schemas and therefore to be primed by their environment to pay attention to the strategic, rather than the moral, components of the environment."[170] Thus, absent the kind of disruption of the link between intuitions and judgments that Fine describes,[171] managers may often fail to perceive the moral dimensions of novel situations in which they need to make rapid decisions. Their intuitive responses, in other words, may contain no moral component, because the prototypes that are the foundation of these intuitions fail to do so.

The decreasing amount of attentional resources that seem to be available to managers suggests that triggering new intuitions may be a more promising way to increase moral awareness than attempting to activate conscious moral reasoning. While both may be necessary, the first may be more important. If this is right, it directs attention to the prototypes that are crucial in generating intuitions.[172] How and why do prototypes come into existence? More specifically for our purposes, what kinds of opportunities might there be to prompt reliance on moral prototypes in the modern organizational setting? As Reynolds argues, "The more the organization can infuse managers with prototypes of ethical behavior, the more reflexive pattern matching will override the system and automatically lead to ethical outcomes."[173]

Reynolds describes moral prototypes as "initially defined by the five senses with information about the observable qualities of the situation," but as distinguished from other prototypes in that they include "normative evaluations and prescriptive recommendations."[174] Moral prototypes thus seem to be mental representations of common scenarios that have moral significance,

168. *See, e.g.*, Jeremy I. M. Carpendale & Dennis L. Krebs, *Situational Variation in Moral Judgment: In a Stage or On a Stage?*, 21 J. YOUTH & ADOLESCENCE 203 (1992).

169. *See* Jennifer Jordan, *Business Experience and Moral Awareness: When Less May Be More* 38 (Tuck School of Business at Dartmouth, Social Science Research Network, Working Paper No. 26, 2005), *available at* http://ssrn.com/abstract=845827.

170. *Id.* at 14; *see also* Dennis A. Gioia, *Pinto Fires and Personal Ethics: A Script Analysis of Missed Opportunities*, 11 J. BUS. ETHICS 379 (1992).

171. *See supra* notes 146–47 and accompanying text.

172. Reynolds, *supra* note 17, at 742. "Prototypes are the central component of the reflexive pattern matching cycle, and given that so many ethical decisions are the result of this cycle, their importance cannot be overstated." *Id.*

173. *Id.* at 745.

174. *Id.* at 739.

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which require that we make distinctive kinds of judgments. One way to gain insight into their operation therefore is to ask, "Why do people make any kind of moral judgment?"[175] The literature that responds to this question is, of course, vast, and I am in no position to offer anything close to an overall assessment of it. Instead, I want to describe one school of thought that is consistent with the intuitionist model, which may help identify prototypes especially relevant to the organizational environment.

B. Morality and Cooperation

A "pragmatic" approach to moral judgment focuses on the functions and purposes that morality serves for human beings.[176] It urges us to "view moral judgments and moral behaviors not as end products of moral reasoning, but, rather, as means to ends, as tools that people use to accomplish tasks and achieve results."[177] In particular, what kind of evolutionary advantage might accrue to beings who engage in moral evaluation? How is morality an adaptive activity in the process of human evolution?

A common answer to these questions that seems especially relevant to the organizational setting is that moral judgments help to promote and reinforce the cooperative behavior necessary for humans to survive and flourish.[178] As Matt Ridley has suggested:

> We are, misanthropes notwithstanding, unable to live without each other. Even on a practical level, it is probably a million years since any human being was entirely and convincingly self-sufficient: able to survive without trading

175. Dennis L. Krebs & Kathy Denton, *Toward a More Pragmatic Approach to Morality: A Critical Evaluation of Kohlberg's Model*, 112 PSYCHOL. REV. 629 (2005); *see also* Dennis L. Krebs et al., *The Forms and Functions of Real-Life Moral Decision-Making*, 26 J. MORAL EDUC. 131 (1997).

176. Krebs & Denton, *supra* note 175, at 639.

177. *Id.* at 639.

178. *See id.* at 641. Krebs and Denton argue, "The codes of conduct, rules, norms, and forms of conduct that uphold systems of cooperation define the domain of morality and the moral orders of societies." *Id.* at 641. We need not assume, however, that the realm of potentially cooperative relations is the only distinctly moral domain. Jonathan Haidt and Craig Joseph, for instance, argue that there are five foundations of intuitive moral judgments, which deal with issues surrounding: (1) harm and care, (2) fairness and reciprocity, (3) ingroup identity and loyalty, (4) authority and respect, and (5) purity and sanctity. Haidt & Joseph, *The Moral Mind*, *supra* note 34, at 16. Their second category seems to correspond most directly with a concern for cooperation, although issues that arise in all domains other than perhaps purity and sanctity also could have implications for the possibility of cooperation. *See id.*

Richard Shweder and his colleagues maintain that there are three major domains of morality, relating to autonomy, community, and divinity. Richard A. Shweder et al., *The "Big Three" of Morality (Autonomy, Community, and Divinity) and the "Big Three" Explanations of Suffering*, *in* MORALITY AND HEALTH 119 (Allan M. Brandt & Paul Rozin eds., 1997).

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> his skills for those of his fellow humans. We are far more dependent on other members of our species than any other ape or monkey.[179]

Similarly, Adam Smith noted, "In almost every other race of animals each individual, when it is grown up to maturity, is entirely independent, and in its natural state has occasion for the assistance of no other living creature. But man has almost constant occasion for the help of his brethren . . . ."[180]

This set of conditions tends to favor those with dispositions to cooperate and to uphold cooperative arrangements. As Richard Leakey and Roger Lewin maintain:

> Throughout our recent evolutionary history . . . there must have been extreme selective pressures in favor of our ability to cooperate as a group . . . . The degree of selective pressure toward cooperation . . . was so strong, and the period over which it operated so extended . . . that it can hardly have failed to become embedded to some degree in our genetic makeup.[181]

Certain emotional responses reflect this evolved disposition. These emotions express moral judgments that people use "to induce themselves and others to cooperate and resist the temptation to cheat."[182] Joshua Greene suggests that our tendency to engage in rapid moral evaluations may reflect the influence of evolution: "We have evolved mechanisms for making quick, emotion-based social judgments," he says, "for 'seeing' rightness and wrongness, because our intensely social lives favour such capacities."[183]

Every system of cooperation is vulnerable to exploitation by those who participate in it. Individuals may capitalize on others' long-term commitments and on delayed or indirect forms of exchange to take more than their share of

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179. RIDLEY, *supra* note 11, at 6; *see also* CASEBEER, *supra* note 11, at 136 ("Owing to the facts of our evolutionary history, sociability and cooperative engagement with the world are both ends in themselves and a means of achieving just about eny other important end we care to mention.").

180. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 7 (William Benton Pub. 1952) (1877).

181. RICHARD E. LEAKEY & ROGER LEWIN, ORIGINS: WHAT NEW DISCOVERIES REVEAL ABOUT THE EMERGENCE OF OUR SPECIES AND ITS POSSIBLE FUTURE 223 (1977); *see also* Krebs & Denton, *supra* note 175, at 641 (discussing how "humans are disposed to practice 'strong reciprocity,'" which is "a predisposition to cooperate with others and to punish those who violate the norms of cooperation, at personal cost, even when it is implausible to expect that these costs will be repaid") (quoting Herbert Gintis et al., *Explaining Altruistic Behavior in Humans*, 24 EVOLUTION & HUM. BEHAV. 153, 153 (2003).

182. Krebs & Denton, *supra* note 175, at 641.

183. Greene, *supra* note 34, at 849. Haidt maintains that the social intuitionist model

> proposes that morality, like language, is a major evolutionary adaptation for an intensely social species, built into multiple regions of the brain and body, that is better described as emergent than as learned yet that requires input and shaping from a particular culture. Moral intuitions are therefore both innate and enculturated.

Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 826.

benefits without reciprocating. Moral norms arise in order to minimize this danger, thereby preserving the viability of cooperation as an adaptive strategy. Feelings of reciprocity, gratitude, sympathy, obligation, and admiration can reinforce cooperative bonds, while feelings of indignation, guilt, and injustice can serve as mechanisms to detect and punish selfish exploitation of cooperative ties. These may move us not simply to cooperate, but to attempt to induce others to do so, and to sanction those who do not. Moral norms and the emotions they evoke thus seek to ensure that "morality and emotional habits pay," by fostering a value system in which "[t]he more you behave in selfless and generous ways the more you can reap the benefits of cooperative endeavor from society. You get more from life if you irrationally forgo opportunism."[184]

On this view, moral judgment is activated by issues involving "social exchange, giving and taking, rights and duties, conflicts of interest, and violations of the principles and rules that uphold cooperative relations."[185] Krebs and Denton maintain that the occasions on which this occurs involve certain characteristic dilemmas. People confront "temptation dilemmas" when they are tempted to pursue their own interests at the expense of others, and "social pressure dilemmas" when they attempt to persuade others to behave in ways that help them achieve their goals.[186] They face dilemmas involving conflicting demands and the needs of others when they must decide what they owe others and what they can claim for themselves.[187] Finally, they must deal with "transgression dilemmas" when they decide whether to use moral judgments to impose sanctions against those who violate moral norms.[188]

Conceptualizing moral judgment in this way implies that "different social contexts are guided by different systems of cooperation, moral orders, or forms of sociality, . . . which are upheld by different types of moral judgment."[189] Cooperative arrangements vary in the immediacy of the personal relationships that they contain. Some involve hierarchical relationships of obedience to those in "higher" positions, coupled with a right to receive their care; some feature literal exchange; still others represent systems of reciprocity based on gratitude and mutual expectations.[190] Increasing in abstraction, the social order itself can be seen as a cooperative arrangement maintained by a sense of

184. RIDLEY, *supra* note 11, at 141.

185. Krebs & Denton, *supra* note 175, at 644.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*; *see also* Dennis L. Krebs et al., *Structural Flexibility of Moral Judgment*, 61 J. PERSONALITY & SOC. PSYCHOL. 1012 (1991).

190. For one typology of forms of cooperation, see Alan Page Fiske, *The Four Elementary Forms of Sociality: Framework for a Unified Theory of Social Relations*, 99 PSYCHOL. REV. 689 (1992).

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mutual obligation, and ultimately by the agreement of free and equal individuals.

These social structures correspond to the stages of moral reasoning that Kohlberg argued reflect gradually increasing moral maturity.[191] In his formulation, one stage displaces another as a person matures.[192] Krebs and Denton argue, however, that society contains a mixture of different forms of cooperation, and that each form of reasoning is appropriate to a particular form.[193] As people mature, they ideally acquire a more comprehensive understanding of the ties that underlie all forms of cooperation in their societies.[194] This allows them to appreciate increasingly more remote and abstract structures of cooperation.[195]

The ability to draw on this understanding when engaged in moral reasoning, however, does not mean this reasoning style replaces all others. Rather, people retain the flexibility to invoke the type of moral judgments appropriate to the cooperative arrangement in question.[196] Cooperation based on a hierarchical structure of paternalism, for instance, may properly elicit moral evaluations that rely on notions of obedience, vulnerability, and care, while cooperation resting on a specialized division of labor may prompt moral judgments invoking norms that speak to contribution, reliance, and opportunism.

This account of moral judgments suggests that moral prototypes are especially likely to emerge in contexts in which our ability to cooperate is at issue. Highlighting the effect of certain behavior on possibilities for cooperation thus may be an important step in both triggering existing prototypes and generating new ones. Even if fostering cooperation is but one of the functions of moral judgments, it is a function that may have particular relevance in the organizational setting.

An organization, of course, is one example of a cooperative human enterprise. It therefore is a setting in which people are engaged in efforts to coordinate their actions with others in order to achieve together what no individual could alone. This means that members of organizations must decide how much to forgo immediate personal advantage for the sake of the larger group, the extent to which they are willing to make contributions that are not immediately reciprocated, whether other people should be sanctioned for exploiting cooperation for selfish gain, and myriad other questions that raise issues of trust, commitment, altruism, selfishness, opportunism, loyalty,

191. Krebs & Denton, *supra* note 175, at 630–31.
192. *Id.*
193. *Id.* at 639–43.
194. *Id.* at 630.
195. *Id.*
196. Krebs & Denton, *supra* note 175, at 633.

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betrayal, and sacrifice that we think of as moral. An organization thus would seem to be an important arena for the elicitation of moral prototypes.

Consider once again my example of the potential emergence of a prototype of sexual harassment in the workplace. Over the past generation, increasing numbers of women have entered the paid labor force. As they have come to participate more in organizational forms of cooperation, it has become clearer that certain behaviors of men toward women that have been unreflectively accepted jeopardize the ability to work cooperatively together. This behavior increasingly elicits moral condemnation. That is not to say that these condemnations rest purely on functional grounds, as opposed to recognition of the equal dignity of women and men. The occasion for vindicating equal dignity in this setting, however, may have arisen as a result of how this form of cooperation has evolved.

C. Triggering Intuitions: Legal Compliance Programs

What might all this mean for the role of moral intuition in promoting ethical behavior and fostering an ethical culture within organizations? It suggests that people in organizations may be especially receptive to appeals that animate dispositions to build and sustain cooperative relationships. I want first to discuss how prompting these dispositions may elicit intuitions that we think of as morally salutary. When this occurs, members of an organization may respond with altruism, sacrifice, and self-restraint that enhances group solidarity and commitment. At the same time, there is a risk that a strong sense of group identity will trigger other intuitions that make members more willing to ignore or even disadvantage those who are not members of the group. I therefore will discuss how an organization might try to minimize the influence of these intuitions. From this perspective, the challenge for an organization is how selectively to elicit and inhibit distinct sets of moral intuitions.

Focusing first on desirable intuitions, these are more likely to come into play the more people regard the organization as a cooperative venture and are sensitive to how different behavior is likely to sustain or jeopardize it. The challenge in a large organization is that the consequences and nature of much behavior can seem remote from the vivid, perhaps primal, scenarios that inform the moral prototypes associated with cooperative relationships. Organizations therefore need to give considerable thought to what kinds of policies and practice can serve as the kind of "custom complexes"[197] that both trigger appropriate moral intuitions and generate new ones.

Research on the relative effectiveness of different types of legal compliance programs suggests one way in which an organization can highlight its character as a cooperative enterprise, and thus potentially activate moral prototypes. This work distinguishes between programs based solely on

197. Haidt, *The Emotional Dog and Its Rational Tail*, *supra* note 34, at 828.

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promulgation and enforcement of rules and those that include what has been described as a values-based component.[198] These orientations are not mutually exclusive, and organizations may differ in the extent to which they emphasize one or the other.[199] They are, however, associated with somewhat different motivations and behaviors.[200]

A program that focuses on compliance with rules, and on imposing penalties for violating them, tends to emphasize deterrence.[201] It sets forth fairly specific prescriptions designed to minimize discretion and regularize behavior.[202] The program puts in place monitoring and audit systems to prevent, detect, report, and punish improper behavior.[203]

What is called a "values-oriented" component of a compliance program has a broader focus.[204] It emphasizes the values to which the organization is committed, encouraging employees to identify with and act on the basis of those values.[205] While there are penalties for acting inconsistently with the values, the organization assumes that people aspire to behave consistently with them and emphasizes that they necessarily will have to exercise some discretion in deciding how to do so.[206]

Research has measured the impact of deterrence-oriented and values-oriented features of a compliance program on different types of ethically significant behavior. Deterrence-oriented features have a positive relationship to: (1) lower observed unethical conduct by others, (2) willingness to seek ethical advice, (3) awareness of ethical issues, and (4) perception of better decision-making.[207] Values-oriented features have an even greater positive relationship to these outcomes. They also have a positive relationship with additional outcomes that deterrence features do not: (1) commitment to the organization, (2) feeling of integrity in that values and behavior at work consistent with those outside of work, and (3) willingness to deliver bad news.[208] Finally, neither kind of orientation alone has a positive effect on the willingness to report unethical behavior, but employees more likely to report

198. *See* TREVIÑO & WEAVER, *supra* note 3, at 191–230; Milton C. Regan, Jr., *Risky Business*, 94 GEO. L.J. 1957, 1970–82 (2006).

199. TREVIÑO & WEAVER, *supra* note 3, at 193.

200. *Id.* at 194.

201. *See id.* at 193.

202. *See id.*

203. *See id.*

204. *See* TREVIÑO & WEAVER, *supra* note 3, at 193; Lynn Sharp Paine, *Managing for Organizational Integrity*, 72 HARV. BUS. REV. 106, 111 (1994).

205. Paine, *supra* note 204, at 111.

206. TREVIÑO & WEAVER, *supra* note 3, at 193; *see also* Paine, *supra note* 204, at 111.

207. TREVIÑO & WEAVER, *supra* note 3, at 205–08.

208. *Id.* at 208.

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such behavior if they perceived a combined values- and deterrence-based orientation.[209]

A perceived values orientation thus "appears to add distinctive and desirable outcomes that are not achieved by a focus on behavioral compliance."[210] A compliance system that has only deterrence features can produce ethical behavior, but its impact will be stronger if it accompanied by values-based features. A clue to why this is so is the fact that values-based features are correlated with commitment to the organization and a sense of individual integrity, while deterrence-based features are not.[211] This suggests that values and deterrence orientations tap into different types of motivation for compliance.[212]

A values orientation prompts ethical behavior because the individual identifies with the organization's commitment to ethics and sees it as valuable for its own sake.[213] Ethical behavior in organizations with this orientation reflects people's sense that the organization's values are consistent with their own.[214] Another way to describe this is that the employee sees herself as part of a cooperative venture that is attempting to serve purposes with which she identifies. A values-based orientation sends a "message of trust and support,"[215] which enhances willingness to contribute to this collective enterprise. This identification with and support for the organization as a cooperative arrangement is an especially durable motivation for ethical behavior.

By contrast, a deterrence program prompts ethical behavior because a person follows rules to avoid sanctions.[216] A program that emphasizes rule-following provides only minimal support for regarding the organization as a scheme of cooperation.[217] The organization is more likely to be perceived as an external force that seeks to impose regulations on behavior because cooperation is scarce.[218]

The relative emphasis on different features of a legal compliance program thus may underscore or minimize the character of an organization as a scheme of cooperation, thereby eliciting or inhibiting moral prototypes associated with cooperative activity. The greater ethical behavior prompted by values-based program features may reflect the role of these prototypes in triggering moral

209. *Id.*
210. *Id.* at 211.
211. *Id.* at 212.
212. TREVIÑO & WEAVER, *supra* note 3, at 212.
213. *Id.*
214. *Id.*
215. *Id.*
216. *Id.* at 200.
217. TREVIÑO & WEAVER, *supra* note 3, at 200.
218. *Id.* at 200–01.

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intuitions. When an individual identifies with an organization, she sees it as a vehicle for realizing personal values through cooperation with others.[219] As a result, she will be more attentive to the ways in which her behavior may support or undermine this cooperative venture.[220] By contrast, a compliance program based solely on deterrence may implicitly send the message that the pursuit of self-interest is the dominant behavior within the organization.[221] This means that the program is unlikely to trigger the type of prototypes and intuitions that provide an especially durable basis for ethical behavior.

There is some support for this "signaling" effect of compliance programs from experiments by Ann Tenbrunsel and David Messick that measure the effect of differing levels of sanctions on willingness to cooperate in organizational contexts.[222] When sanctions are strong, people are more likely to cooperate than when sanctions are weak.[223] When there are no sanctions at all, however, people are also more likely to cooperate than when sanctions are weak.[224]

Why should there be there be less cooperation with weak sanctions than with no sanctions at all? Tensbrunsel and Messick suggest that the presence of sanctions—that is, deterrence features—can incline people to use what they call a business frame.[225] People who use this frame decide how to behave in a situation based on a pragmatic calculation of costs and benefits.[226] This contrasts with the use of an ethical frame, in which people generally do not engage in such calculation.[227] Instead, they tend to make judgments about inherent rightness or wrongness when deciding what to do.[228] One might say, in other words, that each frame elicits a distinct set of prototypes that guide judgment and behavior.[229] "[A] weak sanctioning system," they conclude, "prompts a perception that the decision concerns the costs versus the benefits of cooperating, whereas the lack of such a system prompts relatively more consideration of the ethical aspects of the decision."[230]

Thus, when the presence of sanctions triggers a business frame, and sanctions are strong, an individual will behave ethically because a cost-benefit analysis indicates that is the best thing to do. When the presence of sanctions

219. *Id.* at 197.

220. *Id.*

221. *Id.* at 200.

222. *See* Ann E. Tenbrunsel & David M. Messick, *Sanctioning Systems, Decision Frames, and Cooperation*, 44 ADMIN. SCI. Q. 684 (1999).

223. *Id.* at 700.

224. *Id.* at 694–98.

225. *Id.* at 697.

226. *Id.*

227. Tenbrunsel & Messick, *supra* note 222, at 697.

228. *Id.*

229. *Id.* at 698.

230. *Id.* at 697.

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triggers a business frame, and sanctions are weak, there is a greater chance that an individual will behave unethically, because a cost-benefit analysis is more likely to indicate that is the best course of action. If sanctions are not mentioned, at least some people who are asked to respond to cooperative dilemmas will use an ethical frame. Their behavior is not affected by a cost-benefit analysis, which means that their motivation is different from someone who uses a business frame. As Tenbrunsel and Messick conclude:

> the relationship between sanctioning systems and cooperation rates can be explained by the decision frame that is adopted. . . . [T]his finding indicates that the sanctioning system acts as a situational cue that triggers an assessment of the type of decision that one is making (i.e., ethical or business), which in turn influences cooperation rates. Thus, the sanctioning system influences the frame, but it is the frame that determines the behavior.[231]

An account of moral prototypes as animated by concerns related to cooperation seems consistent with this dynamic. A business frame appears not to activate such prototypes because it depicts the situation as a competitive one in which concern for individual payoffs should be the dominant strategy.[232] Cooperation will be contingent and unstable, depending on whether it is "the more profitable business strategy" in a given instance.[233] An ethical frame, on the other hand, seems to lead an individual to construct the situation as one marked by cooperation, thereby triggering moral prototypes and intuitions that support the notion that cooperation "is the ethical action to take."[234] For this reason, cooperation is the dominant strategy.[235]

Virtually any program, of course, needs to have sanctions available to penalize wrongdoers. If the dominant thrust of the program is values-based, however, those sanctions need not prompt the use of a business frame. Rather, sanctions are likely to be regarded as a means of reinforcing a cooperative scheme by ensuring that individuals do not exploit the willingness of others to cooperate. As Treviño and Weaver observe:

> The values orientation may frame the way employees understand the purpose of compliance activities. When a values orientation is strong, compliance activities can be perceived as part of an overall system of support for ethical behavior. Without a strong values orientation, however, compliance activities

231. *Id.* at 697–98.

232. Tenbrunsel & Messick, *supra* note 222, at 697.

233. *Id.* at 700.

234. *Id.*

235. *Id.* For other accounts of the influence of decision frames, see Bruno S. Frey & Felix Oberholzer-Gee, *The Cost of Price Incentives: An Empirical Analysis of Motivation Crowding-Out*, 87 AM. ECON. REV. 746 (1997); David M. Messick, *Alternative Logics for Decision Making in Social Settings*, 39 J. ECON. BEHAV. & ORG. 11 (1998).

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might be perceived to be part of a system aimed only at detecting misconduct.[236]

D. Triggering Intuitions: Procedural Justice

A crucial element of any effort to promote a cooperative values-based culture is members' belief that the organization treats them fairly. The work of Tom Tyler and his colleagues indicates that people are more likely to commit to an organization if they perceive it as embodying procedural justice.[237] Factors contributing to this perception include whether procedures permit members to participate in decision-making processes, whether they require that objective information be used in those processes, and whether there are efforts to minimize bias.[238] Even if individuals do not always obtain what they want from the organization, they will maintain allegiance to it if they believe that decisions are made through a fair process.[239] This allegiance in turn can motivate ethical behavior.[240] As a result, "an organizational environment characterized by fair procedures will activate strong employee organizational identification, thus leading employees to engage in desirable workplace behaviors and to hold positive attitudes towards their work organizations."[241]

Specifically, Tyler argues that the perception of procedural justice is likely to trigger ethical behavior based on a "self-regulatory" rather than "command and control" model.[242] These models roughly correspond to values-based and deterrence-based approaches to compliance.[243] The command-and-control model "links employees' motivation to follow rules to the manipulation of sanctions in the work place," and is "based on the view that people follow rules as a function of the costs and benefits they associate with doing so."[244] By contrast, a self-regulatory model "is based on the activation of *internal motivations*."[245] It "emphasizes the role that employees' ethical values play in motivating rule following and, in particular, those ethical values that are

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236. TREVIÑO & WEAVER, *supra* note 3, at 212. "Discipline for rule violators serves an important symbolic role in organizations—it reinforces standards, upholds the value of conformity to shared norms, and maintains the perception that the organization is a just place where wrongdoers are held accountable for their actions." Linda Klebe Treviño et al., *Managing Ethics and Legal Compliance: What Works and What Hurts*, 41 CAL. MGMT. REV. 131, 139 (1999).

237. Tom R. Tyler, *Promoting Employee Policy Adherence and Rule Following in Work Settings: The Value of Self-Regulatory Approaches*, 70 BROOK. L. REV. 1287, 1304 (2005).

238. *Id.*

239. *Id.*

240. *Id.*

241. *Id.* at 1303; *see also* TREVIÑO & WEAVER, *supra* note 3, at 267–92.

242. Tyler, *supra* note 237, at 1303.

243. *Id.* at 1287–90.

244. *Id.* at 1290.

245. *Id.*

related to—and developed in the course of their interactions with—their work organization."[246]

Tyler's research concludes that a self-regulatory approach is more effective in promoting ethical behavior because "employees take on the responsibility to follow rules and undertake this responsibility without being concerned with the likelihood of being caught and punished for wrongdoing."[247] They identify with the organization, and are motivated to follow its policies, because they see those policies as furthering values that are consistent with their own.[248] "By activating employees' own ethical values," Tyler maintains, "companies can gain willing cooperation from their employees. By having people regulate themselves, such willing cooperation becomes much more efficient and effective."[249]

This description of the role that fair procedures play in animating identification with an organization and voluntary compliance with its policies is consistent with the idea that moral intuitions are elicited by issues related to cooperation. Tyler and Blader's "group engagement" model posits that groups play an important role in helping individuals construct an identity and sense of worth.[250] "The central reason that people engage themselves in groups," they argue, "is because they use the feedback they receive from those groups to create and maintain their identities."[251] Such feedback includes information on both the social status of the group, which can engender a sense of pride, and the status of the individual within it, which can communicate a feeling of being respected. When people receive information from the group that generates feelings of pride and respect, they are motivated to merge their sense of self with that of the group.

Tyler and Blader maintain that information about procedural fairness within an organization is the most relevant information available to people in determining whether to identify with the organization.[252] They argue that procedural justice provides a sense of "identity security" for the individual.[253] While identifying with an organization can be rewarding, it also carries risks. Hostile, uncooperative, or even indifferent behavior toward an individual by others in the organization can damage her sense of self-worth. Anyone who cooperates with others is vulnerable to exploitation by them. Individuals

246. *Id.*

247. Tyler, *supra* note 237, at 1302.

248. *Id.*

249. *Id.* at 1301–02.

250. Tom R. Tyler & Steven L. Blader, *The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior*, 4 PERSONALITY & SOC. PSYCHOL. REV. 349, 353 (2003).

251. *Id.*

252. *Id.* at 358.

253. *Id.*

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therefore must "balance the potential identity gains associated with merging their identities with a group against the potential risks of that same merger of the self and the group."[254]

To the degree that people believe that the group follows fair procedures in making decisions, they are more likely to feel that they can safely merger their identity with the group.[255] Two components of procedural justice help provide this reassurance. First, fair decision-making processes indicate that decisions will be made by a neutral decision-maker who will consistently apply objective rules, rather than act on the basis of prejudice, stereotypes, or self-interest.[256] Second, treating people with dignity and politeness, taking into account their needs and concerns, communicates that the organization values the individuals who comprise it.[257] This provides assurance that people "will receive treatment that affirms their status well into the future of their group membership."[258]

Another way to describe this is that an organization characterized by procedural justice signals to its members that the organization can be a safe vehicle for gaining the benefits of cooperation with others. If members identify with the organization and see themselves as participants in a cooperative enterprise, they should be particularly sensitive to how different types of behavior can reinforce or undermine cooperation. Situations in which behavior potentially has this effect should be especially likely to elicit moral prototypes and trigger moral intuitions.

The behavior most immediately salient to this process likely will be behavior toward the organization itself. Thus, in an organization with which members identify, we would expect a relatively low incidence of, for instance, diversion of organizational resources for personal gain, as occurred in companies like Tyco and Adelphia. If an individual is primed to recognize the implications of behavior for the success of cooperation, it takes minimal imagination to appreciate that stealing from a cooperative venture weakens that venture's viability.

Sensitivity to the impact of her actions on the organization may also prompt an employee to develop a more expansive sense of responsibility for behavior that affects parties outside the organization. Behavior that harms stakeholders can also injure the organization, as a result of legal penalties, public criticism, consumer boycotts, and the like. This can threaten the success of the scheme of cooperation that the entity represents. The desire to avoid

254. *Id.* at 358.

255. "When organizational procedures are regarded as fair, employees feel that they can safely identify with the work organization and thus become engaged in it." Tyler, *supra* note 237, at 1305 (citation omitted).

256. Tyler & Blader, *supra* note 250, at 359.

257. *Id.*

258. *Id.* at 358–59.

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letting down other participants in this scheme may provide motivation for taking the interests of stakeholders into account.

This is not to say that appeals to be sensitive to stakeholder interests should focus only on this rationale, eschewing efforts to cultivate a wider sense of civic responsibility. Those efforts also can rely on appeals to interdependence, and on the idea of society as an even larger cooperative effort that can be unraveled by certain behavior. The more immediate and palpable experience of life within the organization, however, may make organizational identification an especially powerful force in motivating responsible social behavior. People generally tend to respond more sympathetically in situations in which they think of moral demands as more immediate and personal than those in which they regard such demands as remote and impersonal.[259] The former appear to trigger more intensive emotional reactions than the latter.[260] Engagement in more deliberate moral reasoning may counteract this tendency, but it seems to be a powerful one that we need to take into account.[261] Perhaps we can capitalize on it to promote more pro-social behavior based on concern for the organization, while using this as an intermediate toward inculcating a more expansive conception of social interdependence.

The importance of procedural justice thus suggests that if an organization wants to foster a culture in which people act socially responsible and in ethical ways, one place to start may be to establish and sustain procedural justice within the organization.[262] "To most employees, ethics means how the organization treats them and their coworkers."[263] When members or employees think of "ethics," their initial focus is not necessarily on conduct covered by a company's ethics or legal compliance program.[264] Rather, it is

259. *See* Joshua Greene, *Cognitive Neuroscience and the Structure of the Moral Mind*, *in* INNATENESS AND THE STRUCTURE OF THE MIND (Stephen Laurence, Peter Carruthers & Stephen Stich eds., forthcoming); Joshua D. Greene et al., *An fMRI Investigation of Emotional Engagement in Moral Judgment*, 293 SCI. 2105 (2001).

260. *See* Greene et al. *supra* note 259.

261. Joshua Greene and his colleagues observe that

> our common ancestors lived intensely social lives guided by emotions such as empathy, anger, gratitude, jealousy, joy, love, and a sense of fairness, and all of this in the apparent absence of moral *reasoning*. . . . Thus, from an evolutionary point of view, it would be strange if human behavior were not driven in part by domain-specific social-emotional dispositions.

Greene et al., *supra* note 143, at 389 (citation omitted).

Greene and his colleagues go on to suggest, however, that reactions based on these dispositions sometimes may be revised or overriden by deliberate reasoning: "At the same time, however, humans appear to possess a domain-general capacity for sophisticated abstract reasoning, and it would be surprising as well if this capacity played no role in human moral judgment." *Id.* at 389–90.

262. Treviño et al., *supra* note 236, at 142.

263. *Id.*

264. *Id.*

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how people within the organization in positions of authority model ethical behavior in dealing with employees and subordinates.[265]

This experience of ethics is especially vivid, and thus has potential to prompt reliance on moral prototypes and intuitions. An organization that is perceived as treating people fairly within it can acquire the status of a cooperative venture with which people identify. Because of the connection between moral judgments and cooperation, an organization that acquires this status may enhance the likelihood that people will respond to many situations with ethical implications on the basis of automatic moral intuitions. Such intuitions help can help promote the self-regulation that Tyler describes as the most effective foundation for legal compliance and ethical behavior.

E. Triggering Intuitions: Challenges

We need to recognize that modern organizations attempting to trigger constructive moral intuitions may face significant obstacles. Both increasing scale and changing work relationships may limit the ability of an organization to induce members to identify with it as participants in a cooperative scheme.

As organizations become larger and more far-flung, they become more abstract to their members. An individual's locus of attachments may well not be the organization as a whole, but her division, work group, or project team. These multiple and potentially conflicting loyalties throughout the organization can constitute a vivid set of relationships that compete for allegiance with the larger entity.[266]

The research on procedural justice reflects some sensitivity to this phenomenon. It suggests that employees' daily experiences with matters such as compensation, promotion, assignments, and time off all contribute to a perception of the organization as a whole. Similarly, research indicates that, for employees, dealings with supervisors effectively are interactions with the organization. As Treviño and Weaver note, "When it comes to ethics, leaders are leaders, and the level (supervisory or executive) does not seem to matter much to employees. If a middle manager puts pressure on subordinates, employees are likely to infer that the pressure is coming from the top."[267] Since all these experiences are occasions for strengthening or weakening a member's allegiance to an organization, any institutional initiatives will have to be embedded in daily operations, and members of management at all levels will have to speak in a consistent voice. The larger the organization, of course, the more challenging it will be to carry this out.

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265. *Id.*

266. For an interesting case study of this phenomenon, see Paul F. Levy, *The Nut Island Effect: When Good Teams Go Wrong*, HARV. BUS. REV., Mar. 2001, at 51.

267. TREVIÑO & WEAVER, *supra* note 3, at 222.

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The changing nature of the relationship between employer and employee also may limit the ability of an organization to inspire allegiance and identification. As Katherine Stone has observed:

> No longer is employment centered on a single, primary employer. Instead, employees now expect to change jobs frequently. No longer does an employee derive identity from a formal employment relationship with a single firm; rather employment identity comes from attachment to an occupation, a skills cluster, or an industry. At the same time, firms now expect a regular amount of churning in their workplaces. They encourage employees to look upon their jobs differently, to manage their own careers, and not to expect career-long job security.[268]

Scholars have examined the extent to which the emergence of these conditions has given rise to a new "psychological contract" that reflects employees' expectations for and perceptions of their work.[269] Some suggest that under this contract, an employee no longer assumes that employment offers opportunity to advance within the organization's internal labor market, but that it "offers job opportunities with other employers and marketability in the external labor market."[270] In other words, an individual may regard her relationship with an organization as more of a bargain between self-interested parties, and less of an opportunity for her to participate in a mutual long-term cooperative venture in which she identifies with the values of the entity. Surveying the scholarship on this issue is beyond the scope of this article, but it is clear that we will need to analyze carefully how changing expectations in the employment relationship might affect efforts to promote identification with an organization as a scheme of cooperation.

Finally, even if an organization is successful in eliciting intuitions that promote strong organizational solidarity, the very success of that project may pose risks. Such solidarity can prompt altruisim and other-regarding behavior for the benefit of other group members—but lead people to favor the group over "outsiders" such as customers, suppliers, and the larger community. Strong bonds of organizational cooperation, in other words, can be a double-edged sword. I discuss this risk in the next section. My treatment will not be as extensive as my discussion of morally positive intuitions, but I want to identify this issue as one that requires serious attention. At a minimum, it should disabuse us of any notion that fostering organizational cooperation and

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268. KATHERINE W.V. STONE, FROM WIDGETS TO DIGITS: EMPLOYMENT REGULATION FOR THE CHANGING WORKPLACE 3 (2004); *see also* RICHARD SENNETT, THE CORROSION OF CHARACTER: THE PERSONAL CONSEQUENCES OF WORK IN THE NEW CAPITALISM (2000).

269. *See, e.g.*, STONE, *supra* note 268, at 88–92; Maddy Janssens, Luc Sels, & Inge Van den Brande, *MultipleTypes of Psychological Contracts: A Six-Cluster Solution*, 56 HUM. REL. 1349 (2003); William H. Turnley & Daniel C. Feldman, *The Impact of Psychological Contract Violations on Exit, Voice, and Neglect*, 52 HUM. REL. 895 (1999).

270. STONE, *supra* note 268, at 91 (footnote omitted).

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solidarity will provide a straightforward method of promoting prosocial behavior.

F. Inhibiting Intuitions

Promoting attitudes and behavior that enhance cooperation within an organization may not necessarily benefit parties outside it. Cooter and Eisenberg underscore this with their distinction between "agent character" and "general character" in the business firm.[271] Companies that develop "firm-specific fairness norms"[272] that their agents internalize can promote efficiency by fostering cooperation within the firm. The goal is for employees to develop good agent character, which they define as "the disposition of an agent of a firm to adhere to the *firm's* normative standards, reflexively or on the basis of commitment even when against interest."[273] In such a firm, we would expect a relatively low incidence of, for instance, diversion of organizational resources for personal gain, as occurred in companies like Tyco and Adelphia. An employee with good agent character is primed to recognize the implications of her behavior for the success of the firm. She will, in other words, readily appreciate that stealing from a cooperative venture weakens that venture's viability.

By contrast, good general character is the disposition to adhere to *society's* normative standards.[274] Cooter and Eisenberg suggest that "almost every firm benefits from its agents dealing fairly with itself and one another, although the actual content of fairness norms differs among firms."[275] Evolutionary forces acting through market competition should reward and select for good agent character and firms in which a critical mass of its employees possess it. Those forces will not, however, necessarily, favor firms that promote good general character. Firm survival depends on relative firm profitability, and firms may be profitable by dealing with outsiders in various ways. "Some firms . . . benefit from their agents dealing fairly with outsiders, in which case good agent character goes with good general character. Other firms, however, benefit from their agents dealing unfairly with outsiders, in which case good agent character goes with bad character."[276]

The benefits associated with each strategy toward outsiders will depend on a complex set of considerations that relate to the characteristics of the market

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271. Robert Cooter & Melvin A. Eisenberg, *Fairness, Character, and Efficiency in Firms*, 149 U. PA. L. REV. 1717, 1723 (2001).

272. *Id.* at 1717.

273. *Id.* at 1726.

274. *Id.*

275. *Id.* The benefits to individual agents, however, may be more qualified. *See* Donald C. Langevoort, *Opening the "Black Box" of Culture in Law and Economics*, 162 J. INST. & THEORETICAL ECON. 1, 8 (2006).

276. Cooter & Eisenberg, *supra* note 271, at 1726.

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in which the firm operates. Don Langevoort, for instance, suggests that firms that operate in highly competitive markets will tend to have strong corporate cultures because of the role that culture can play in creating shared expectations that enable people to act predictably and make decisions more quickly.[277] The internal trust, loyalty, and cooperation that characterize these firms can give them a competitive edge. At the same time, these attributes "may produce a heightened level of aggressiveness toward non-members."[278] As he elaborates:

> A firm in a very competitive market may well benefit from an internal culture where strong internal bonds . . . produce a set of attitudes that not only get the group "pumped up" but also inculcate the sense that competitors (and even customers, perhaps) are opponents in a contest. That will legitimate more aggressive tactics than might otherwise be socially appropriate, which could be a form of competitive adaptation.[279]

As Langevoort observes, the result may be little or no attention to interests "that have less immediate connection to the bottom line."[280]

The possibility—indeed, perhaps the likelihood—of such behavior is a lesson that emerges from much of the research on social identity and group processes. Individuals have a pronounced tendency to identify with groups, sometimes in ways that deeply implicate their identities. When they do so, the basic conclusion of this research is fairly simple: "To the extent that people's group membership is a meaningful source of self-beliefs and self-esteem, it should promote implicit preference for the ingroup relative to outgroups."[281]

Once group identity is formed, it can trigger powerful visceral, non-conscious judgments that automatically favor group members over others. Taking non-group interests into account then will require deliberately overriding these emotional reactions through conscious reasoning that requires greater cognitive effort. Joshua Greene's theory of the cognitive operations involved in deontological and consequentialist moral judgments can shed some light on this dynamic.[282] Greene suggests that situations that involve impacts on people with whom we can personally identify tend to elicit non-conscious moral responses that we justify in the categorical terms that characterize deontological theory. By contrast, "when harmful actions are sufficiently impersonal, they fail to push our emotional buttons, despite their seriousness,

277. *See* Langevoort, *supra* note 275, at 14.

278. *Id.* at 7.

279. *Id.*

280. *Id.*

281. Nilanjana Dasgupta, *Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations*, 17 SOC. JUST. RES. 143, 148 (2004); *see also* BAZERMAN, *supra* note 7, at 126–27.

282. *See* Joshua Greene, *The Secret Joke of Kant's Soul* (forthcoming) (manuscript on file with author).

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and as a result we tend to think about them in a more detached, actuarial fashion."[283] The plight of a single child trapped in a mine shaft, for instance, can move us more than millions of children starving a hemisphere away.

We can think of this in terms of concentric circles. The closer that morally significant events are to the core, the more likely they are to trigger non-conscious moral intuitions. The further we move from this core, the more likely deliberate moral cognition will come into play. Thus, situations that affect a person's work group will tend to have more emotional salience than those that affect the larger organization in which she works—but those that affect the organization are likely to elicit a more visceral reaction than those that affect society at large. The ability of employees to take account of the social impacts of their actions thus in some circumstance may require overcoming automatic emotional reactions that lead them to put the organization's interest first. This suggests that organizations that are genuinely interested in encouraging socially responsible behavior by their members may need to temper the very moral intuitions that they seek to elicit. They will have to foster loyalty and commitment to the organization while encouraging moral awareness that extends beyond its boundaries.

One way to do this can be to draw upon employees' identification with the organization to stress the risks to the entity of behavior that is regarded as socially irresponsible. Behavior that harms stakeholders also can injure the organization as a result of legal penalties, public criticism, consumer boycotts, and diminished social perception of the legitimacy of the organization.[284] This can threaten the entity with which the employee identifies and the scheme of cooperation that it represents. The desire to preserve the viability of this source of identity and to avoid letting down other participants in this scheme may provide motivation for taking the interests of stakeholders into account. This approach involves the cultivation of more deliberate moral reasoning that considers the impact of behavior on "outsiders." It thus serves as a counterweight to visceral responses that may unreflectively favor the organization's immediate interest. At the same time, it can have motivational force because it relies on the emotional resonance of the employee's identification with the organization.

Focusing on the risks of socially irresponsible behavior need not require that the employee identify with stakeholder interests or even regard them important. It is sufficient that she see stakeholder concerns as pragmatic constraints on the organization's pursuit of narrow self-interest.

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283. *Id.* at 11.

284. *See* NEIL GUNNINGHAM, ROBERT A. KAGAN & DOROTHY THORNTON, SHADES OF GREEN: BUSINESS, REGULATION, AND ENVIRONMENT (2003); Donald Langevoort, *Someplace Between Philosophy and Economics: Legitimacy and Good Corporate Lawyering*, 75 FORDHAM L. REV. 1615 (2006).

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Sensitivity to the impact of her actions on the organization may also prompt an employee to develop a more expansive sense of responsibility for behavior that affects parties outside the organization. Behavior that harms stakeholders can also injure the organization, as a result of legal penalties, public criticism, consumer boycotts, and the like. This can threaten the success of the scheme of cooperation that the entity represents. The desire to avoid letting down other participants in this scheme may provide motivation for taking the interests of stakeholders into account.

This is not to say that appeals to be sensitive to stakeholder interests should focus only on this rationale, eschewing efforts to cultivate a wider sense of civic responsibility. Those efforts also can rely on appeals to interdependence, and on the idea of society as an even larger cooperative effort that can be unraveled by certain behavior. It will require identification with a more abstract community than the organization, and more reliance on moral reasoning that involves even greater cognitive effort. Organizational leaders will need to be credible about their commitment to larger social values for this kind of appeal to be effective. If they can do this, they may be able to tap into employees' desires for involvement in socially meaningful activities. Still, while particular events may elicit expansive conceptions of social identity and interdependence, it is difficult to say how durable these understandings are likely to be on a day-to-day basis.

It is worth mentioning at least one final complication likely to beset any effort to inhibit intuitions that lead people to favor group over nongroup interests. An organizational culture that promotes cooperation enlists automatic moral intuitions to make interaction among its agents smooth and relatively predictable. We can think of these intuitions as heuristics that enable individuals to respond rapidly as events unfold.[285] Further, responses such as sympathy, loyalty, and commitment lessen the need for negotiation, provide motivation for other-regarding behavior, and furnish guidance in ambiguous situations. This all increases the organization's productivity in achieving its objectives.

Any effort to temper moral intuitions by encouraging slower, more deliberate moral reasoning processes runs the risk of reducing these benefits. Attempting to weigh the impacts of organizational actions on a wide range of stakeholders can be a time-consuming, imprecise process that generates disagreement and complicates decision-making. Organizations thus may find it difficult to determine the optimal balance of heuristics and deliberation. Given the complexity of this task, the path of least resistance may well be to privilege the heuristics and limit efforts to induce decision-making that

285. On the concept of organizational heuristics, see Donald C. Langevoort, *Heuristics Inside the Firm: Perspectives from Behavioral Law and Economics*, *in* HEURISTICS AND THE LAW 91 (Gerd Gigerenzer & Christoph Engel eds., 2006).

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requires more cognitive effort. Such tendencies may be especially likely in, say, companies that operate in highly competitive markets, where seizing opportunities quickly may be crucial to survival. This underscores that taking account of moral intuitions in analyzing and shaping organizational culture will be a complicated process, which requires sensitivity to the particular context in which a given organization must function.

G. Summary

Research on moral cognition suggests that fostering an ethical organizational culture requires a complex strategy. An organization needs to elicit some non-conscious moral intuitions, while simultaneously trying to blunt the impact of others by encouraging more deliberate moral reasoning. Triggering salutary intuitions may be more successful the more that individuals regard the organization as a cooperative venture with which they identify. Emphasizing organizational values can enlist intrinsic motivation for ethical behavior, prompting the use of a perceptual frame that does not engage in cost-benefit analysis in choosing among different courses of action. Strong and consistent sanctions for misconduct can underscore the organization's commitment to the values that it professes. Finally, an organization will have greater success in these efforts if its members believe that it treats them in according with fair process.

Both the increasing scale of organizations and the attenuation of loyalties between employees and employers will pose challenges to any attempt to promote a culture with which individuals strongly identify. Moreover, the very success in fostering such identification can lead to reliance on other more pernicious intuitions that may lead individuals to favor the organization at the expense of its stakeholders. Sensitivity to broader social interests therefore will require conscious efforts to take into account the impact of behavior on more abstract constituencies.

All these observations are at a high level of generality, which neglects the ways in which the specific challenges that organizations face will depend on their particular characteristics. The history of an organization, the types of goods or services that it provides, the competitiveness of the market in which it operates, its geographic scope, the technology on which it relies, and the personalities of the individuals in positions of authority are but a few of the variables that will shape the task of attempting to promote an ethical culture. More fine-grained analysis of the role of moral intuitions in organizational behavior ideally will provide greater insight into how these dynamics play out.

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CONCLUSION

Numerous observers have pointed out the limits of rule-following as a recipe for ethical behavior in the modern organization. This has shifted focus to the elusive concept of culture as an ostensibly firmer foundation for virtuous conduct. There is much to this critique and recommendation. Even, however, if we make simplifying assumptions about the ability of organizational leaders to speak with one voice in conveying a set of consistent expectations that all members will interpret identically, creating and sustaining an ethical organizational culture faces significant challenges.

Work in cognitive psychology and behavioral economics in recent years has emphasized that appreciating the operation and influence of non-conscious cognitive processes is crucial for anyone who hopes to shape behavior in organizations. An important piece of the puzzle is gaining a better understanding of when and how responses arise that we think of as distinctly moral. An emerging body of work on moral intuitions may help with this project. It suggests that emotion plays a significant role in moral judgment, and that reasoning often is employed after, rather than prior to, making such judgments. I have suggested, albeit in somewhat stylized fashion, how we might begin to draw on the insights of this research to enhance the likelihood of ethical behavior in organizations. This is based on my belief that we should explore the possibility that "the mechanisms for changing the ethics of a culture lie in understanding the prototypes that are shared across the organization and the moral rules that are emphasized within the organization."[286]

Gaining a fuller appreciation of the nature of moral intuitions does not, of course, mean that we must accept the desirability of either particular intuitions or the process by which they arise. Intuitions are a mixed bag.[287] We may regard some as salutary, and thus as worth reinforcing, and others as pernicious, and therefore in need of countering. As Joshua Greene suggests, our moral judgment may consist of "a complex hodgepodge of emotional responses and rational (re)constructions, shaped by biological and cultural forces, that do some things well and other things extremely poorly."[288]

Furthermore, despite the influence of moral intuitions, we also can be moved by moral reasoning that precedes, rather than simply follows, moral judgment in some cases. Even if the research that I have described indicates that we tend to rely more on intuition and less on reasoning than we believe, we are capable in some circumstances of revising or overriding our intuitive

286. Reynolds, *supra* note 17, at 745.

287. *See generally* DAVID G. MYERS, INTUITIONS: ITS POWERS AND PERILS (2002).

288. Joshua Greene, The Moral Significance of Moral Psychology, http://www.wjh.harvard.edu/~jgreene/ (scroll to "The Moral Significance of Moral Psychology").

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judgments based on conscious deliberation. Ideally, further research will provide more insight into the conditions that are hospitable to this process.

Before we begin to celebrate the steady march of reason in taming intuitions, however, I want to end on a note of caution. We need to consider whether the accelerating demands on our attention in modern life are likely to reduce, rather than enhance, the role of deliberate reasoning. It is a common complaint that we often feel inundated by a flood of stimulation and information, an increasing portion of which consists of visual cues that directly engage our emotions, much of which calls for virtually immediate replies from us. As the chair of one large law firm observes:

> Today, because of the rapid pace of the business world and the demands of technology, we have a substantial amount of pressure to provide instantaneous responses. From our desks, we summon the powers of technology to help us meet our clients' demands for instantaneous responses. That has reduced somewhat the opportunity for collegiality and collaboration, as well as the chance to be thoughtful and reflective, that we once enjoyed. To some extent we have traded contemplation and collaboration for efficiency.[289]

As a result, we may implicitly rely on moral intuitions in the coming years even more than we do now. If this scenario is plausible, it underscores the urgency of better understanding the relationship between moral intuition and moral reasoning in the kind of complex beings that we are.

289. R. Bruce McLean, *On Being a Successful Lawyer*, *in* INSIDE THE MINDS: LEADING LAWYERS: THE ART & SCIENCE OF BEING A SUCCESSFUL LAWYER 143, 157 (2002).

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