

## The Pervasive Effect of “Priors”

Claire A. Hill, University of Minnesota Law School

In an earlier article, I argued that classic formulations of the effects of legal sanctions were seriously incomplete. Jones, considering whether to commit a particular crime, computes the crime’s expected cost: the sanction multiplied by the probability that the sanction will be imposed on him. What makes this formulation incomplete is Jones’s starting point, or prior. An appreciable number of people, especially people with poor economic prospects, believe the world is not just.<sup>1</sup> They may think that they will be sanctioned whether or not they commit crimes. The relevant computation to a person who thinks the world is not just is thus the “net expected cost” to committing a crime: the increment above his baseline assessment that he will be sanctioned in any event that is attributable to committing the crime at issue. If his baseline assessment is high enough, the net expected cost of committing the crime may be quite low.

In my broader project I make the case that starting points, or priors, need a far more prominent place in legal analysis than they presently have. Priors for this purpose are not simply prior beliefs – they include many aspects of a person’s mental state, conscious and not conscious. They include the person’s values, temperament, attitudes, and self-identification. The priors that the literature considers are mostly mistaken beliefs or biases; once these are identified in a particular context, ways to ‘correct’ or limit the effect of the mistake or the use some debiasing technique, are typically proposed. But: is the belief that the world is just, or is not just, a mistake? The answer is not clear. Some people have very good evidence that the world is just; others have very good evidence that it is not. For others, the evidence is murkier. And of course, a reasonable view would be that the world is just some of the time in some contexts. Whether people have a belief in a just world matters enormously for society, and not just for the efficacy of sanctions for criminal behavior. If the world is not just, there is far less reason to put off consumption in favor of investment, with its (on this worldview) highly uncertain returns.

Many more priors are enormously relevant for law. One example is priors in the form of prototypes of actors important for law. A person who thinks people who work in government are generally competent and well-motivated will favor a larger role for government, and may be more apt to interpret bad government behavior as aberrational (or not view it as bad at all). A person who learns of a lawsuit against a business under the Americans With Disabilities Act may think the plaintiff is an opportunist exaggerating or inventing an injury and saddling business with costs, or that the business is appropriately being called to account, depending on his priors. The effect of priors will be somewhat lessened as and when particular facts and contexts are considered, but will remain important, including as sources of disagreement as to what is, and what should be.

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<sup>1</sup> The seminal figure in BJW research is Melvin Lerner. His earliest papers on the subject are in the mid-1960s. His 1980 book on the subject is Melvin J. Lerner, *The Belief in a Just World: A Fundamental Delusion* (New York: Plenum Press, 1980).