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Reasons to obey or disobey the law: pragmatic necessity of recourse to the legitimacy of the law-implementing institutions and procedural justice

<http://dx.doi.org/10.12775/SIT.2020.026>

1. The realistic assumption on human nature

Human nature was shaped by natural evolution and the development of culture. All humans have acquired many capacities; we can talk many languages, we can think in many different ways, learn, know what is morally wrong or right, work in a more or less efficient manner, play, create beauty, fight, etc. Thus there is no good reason to reduce human nature just to one selected aspect of human capacities and abilities by regarding a human being as a *homo sapiens*, *homo ludens* (J. Huizinga), *homo sacer* (G. Agamben) or *homo faber* (K. Marx, H. Bergson, M. Frisch) or *homo consumens*. There would be no human development without the capacity to learn. So perhaps human nature has been shaped by the capacity to learn first of all. It is not my point, however. I would assume in my further argument that **human nature consists of the plu-**

ality of capacities and this very plurality makes it singular and unique. It seems unwise to reduce a human being just to a single and only one capacity. Set of needs and set of capacities make us unique in the Universe and not the one single feature such as the capacity to think that is frequently assumed. Due to many human capacities, we may have many different reasons to act and to obey rules and principles.

2. Reasons for obedience to legal norms

We are driven by needs, desires and interests, by values and norms, by compelling situational challenges and by our feelings and more sophisticated emotions. Our motivations are complex and diversified. Our reasons for action are no less complex and depend on the type of action and on the conditions under which this specific action shall be undertaken.

All spaces where humans live are covered by some variety of social rules. The growing complexity of our civilisation fosters the expansion of legal regulation based on legislation and to some degree on international agreements between governments. This results in dynamic colonization of the human world by abstract rules executed by the professional apparatus of the state. Persons may positively react to legal norms in two forms of behaviour:

- compliance – one does not what is prohibited by the law, his attitude may be passive;
- obedience – one does what the law says he or she should do; she is requested to be active

Obedience to legal requirements by action or just passive compliance with the legal norms is only a **tiny part of human existence and experience**. It seems reasonable to remember about it while thinking about a variety of reasons why people actually obey or disobey the law and why they should rather obey than disobey this kind of normativity that is only **one of many forms of normativity regulating human behaviour**.

Reasons for obedience or disobedience to the law may be classified as follows:

1. Persons may obey/disobey the law because they **have to** do so; they are compelled by some other persons or organizations. The most obvious compelling reason is a threat of sanction that is expressed by a legal norm and high probability that sanctions will be applied in a due process of law. We may distinguish real necessity based on facts and normative necessity based on norms. It is necessary to behave in such a way that we can preserve our existence (existential necessity) or our capacity to accomplish our goals (functional necessity). Normative necessity is related to the fundamental moral question “what we should do?” or “should we obey the norms that are formally valid and binding?”. The problem of moral obligation we will discuss a bit later in this study while looking for grounds of the legitimacy of law.
2. Persons may obey/disobey the law because they **want** to behave this way. They may want to obey or disobey for general or specific reasons. **General reasons why persons may want to obey the law** are content-independent and may regard any piece of law. Most frequently persons obey the law because they believe it is valid and binding. Since Hobbes and many accomplishments of legal positivism some persons accept the Roman law principle *dura lex sed lex*. The content of legal rules or style of law execution is not important. However, there are many other general reasons for obedience to the law or compliance with the legal norms such as:
 - **self-interest** related to some public goods, because we need peace and protection of our property and we may regard the law as a tool for necessary coordination of human actions;
 - **tacit consent** or hypothetical consent of citizens could be a matter of convenience rather than a conscious choice based on the self-interest;
 - **cooperation** can be secured by the law and people may need it. For some persons, fairness is a more important task of the law than the cooperation itself. For those

who need some order the reason to obey the law would be just a fact that the law can facilitate cooperation and they prefer cooperation or at least a conflict avoidance.

Richard McAdams addressed a problem why do people obey the law. Economists credit deterrence, saying that legal sanctions influence behaviour and sociologists point to legitimacy, the idea that people obey the law because they see it as a legitimate authority. But that's not the whole story of compliance, McAdams argues.¹ He developed two alternatives to deterrence and legitimacy of law. There are two theories of **how the law works expressively**: by allowing people to coordinate and by signalling new information and beliefs. When focusing on the law's expressive influence on beliefs and behaviour, one should focus on the audience meaning of the law, rather than the speaker's meaning or sentence meaning

The coordination theory says that law works as a focal point to help people avoid conflict or other undesirable situations.² Many people seek order, and they sometimes obtain a mutually shared benefit when each expects the other to behave following the law. One example is a one-way traffic sign, which "we could imagine working without sanctions or legitimacy because you would be a fool to ignore it", he argues. "You see the one-way sign, and you know other people see the one-way sign, and you expect that there's a chance you'll have a head-on collision if you go the wrong way. Your reason to obey the one-way sign is independent of sanctions or legitimacy – it's simply to coordinate with people". But the law also works expressively by signalling information about the risk or public attitudes that cause people to update their behaviour. "People take the beliefs of others as input into their own beliefs and changing their beliefs can cause them to change their behaviour".

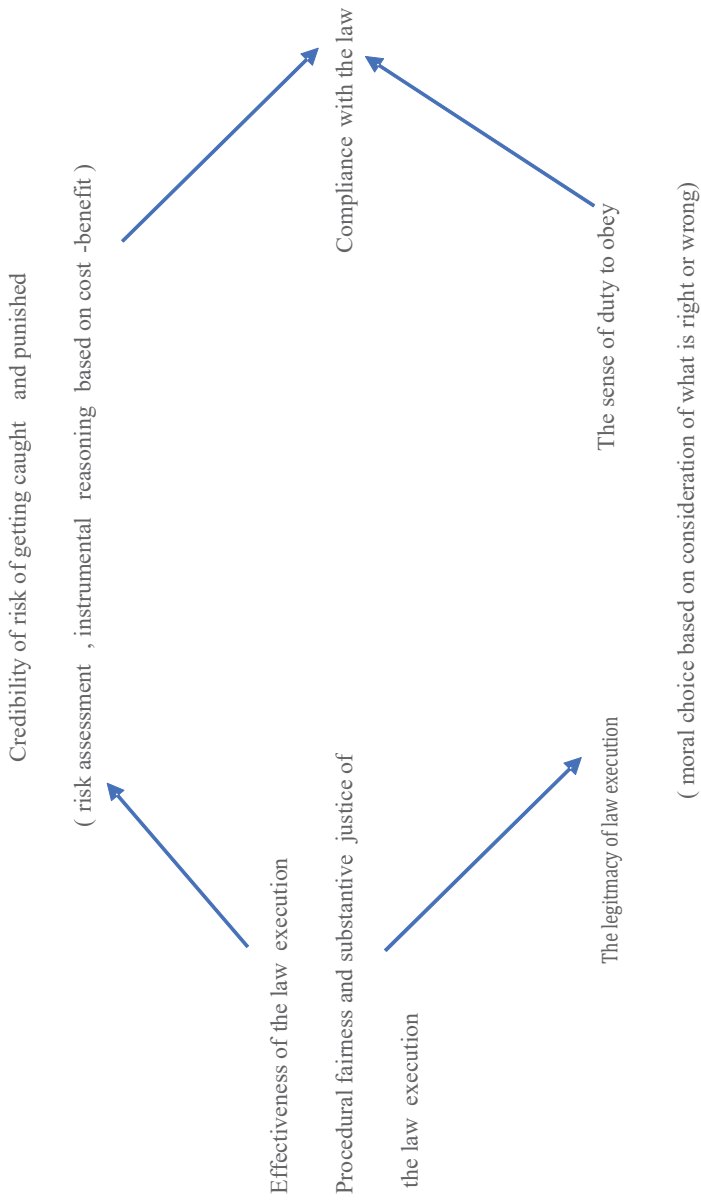
¹ R. Adams, *The expressive powers of law: Theories and limits*, Harvard University Press 2015, <http://www.law.uchicago.edu/news/why-do-people-obey-law> (access: 17.5.2020).

² The concept of the "focal point" was developed by Thomas Schelling in his theory of games when players try to evaluate and balance conflict and cooperation strategies of their behaviours. The focal points are seemingly extraneous but salient factors which can influence human behaviour.

For example, a new smoking ban might reveal rising disapproval of cigarette smoking, and it might also reveal that lawmakers now believe it's harmful. Either of these two reasons could change behaviour as one may wish to avoid confrontation and criticism of non-smoking persons and to take into consideration the signal from a law-making authority that smoking is harmful. Mc Adams is aware that expressive power of law is limited because there are persons who are not seeking to coordinate as they have a single strategy that they believe is best, regardless of what the other side does. In such a case we may need sanctions or legitimacy to assure obedience to the law.

His basic idea is that **the law can create a focal point for human behaviour** in situations (1) where individuals seek to coordinate their actions, (2) the law is salient (public and clear), and (3) there are no competing focal points, legal expression creates self-fulfilling expectations of how to coordinate. The law's power as a coordinating focal point is easiest to discern in international and constitutional law, where sanctions are scarce, but also supplies an increment of compliance in domains where sanctions do exist, such as the regulation of traffic, property, and public smoking. Law's focal power may be undermined by competing sources of focal points, particularly existing social and moral norms, customs, and conventions. Yet the law can expressively influence these forms of informal order. A primary reason is that legal change commonly occurs when expectations are unsettled, as where a social movement challenges existing norms. Law then re-establishes expectations. Law also has focal influence when it clarifies ambiguities in informal order, as where law codifies custom. This dynamic perspective reveals how legal sanctions might first emerge and also a synergy between focal points and legitimacy.

Legislation may reveal many types of information which could influence human behaviour. I can be informed about: 1. public attitudes, causing individuals to modify their behaviour to avoid public disapproval, 2. about risks, causing individuals to modify their behaviour to avoid risk, 3. about unexpectedly frequent violations, which could undermine deterrence. The revelation of information is performed not only by a law-making authority but by the



Model 1. Why Do People Obey the Law? Some fear punishment. Others respect legitimate law implementing authority

law enforcement authorities such as the judiciary and executive branch of public authority.

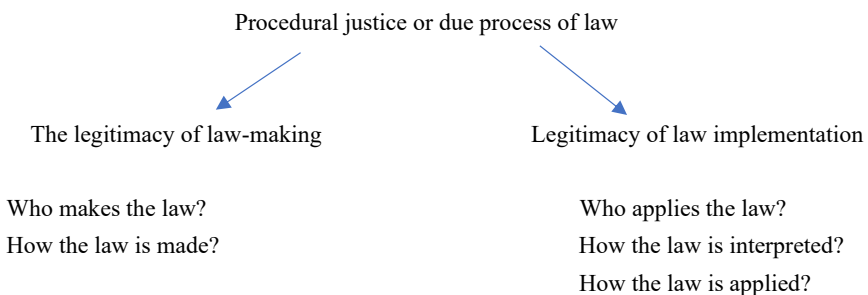
Specific reasons for obedience are related to specific laws, because of their moral goodness or any other purely pragmatic reason. Among specific reasons, we distinguish between motivational and normative reasons. **Motivational reasons (why a person acted?)** – It is wrong to break the law because you could get caught and be punished. Motivation is very simple – just a fear of being punished from a bad man perspective (as Oliver Wendell Holmes has aptly put it) is sufficient to make a person obedient to legal rules. **Normative reasons (what for a person acted?)** are based on the belief that there are some norms and values that protect moral goods such as survival (society needs law and order to survive, without laws, there will be chaos, everyone would go wild if the law did not stop them), harmony, trust between people (law-breaking undermines trust between people), human dignity and freedom (the law protects people from harm and it is wrong to harm other people; law-breaking violates individual people's rights, such as their rights to property or life). Even if I knew that I would not be caught, I would still not want to break a law, whenever I have a strong normative reason to obey the law. Morally robust reasons referring to primary moral goods are relevant as these reasons may trump situational reasons related to secondary goods at stake.

The following model 1 shows some practical implications of this distinction between motivational and normative reasons to obey the law.

3. The legitimacy of law and legitimacy of institutions

Legitimate law is regarded by a person as worthy of trust and worthy of acceptance/approval thus as worthy of obedience. I assume that there is a three-prong sequence consisting of trust, approval of performance and actual obedience to legal norms. Why a rational participant to a legal order shall perceive a specific law as a legitimate one? The legitimacy of law can be based on:

1. **Values** that are protected by the law when a person or a group of persons perceive those values as the same values they share. If the law reflects widely shared values it deserves to be regarded as worthy of obedience.
2. **Substantive rules and principles** of morality or religion or traditions and customs. The substantive content of law matters. If the content of the law follows to a high degree the moral or religious beliefs, or traditions and customs deeply rooted in the culture of the society, then the participants may regard the law as a legitimate. The long tradition of the natural law philosophy regarded the law of nature as higher than a positive law and as a standard of the validity of the enacted law. The substantive justice can be acknowledged as the distributive justice (fairness in the distribution of rights or resources), and retributive justice (fairness in the punishment of wrongs).
3. **Practical performance outcomes** such as conflict prevention and resolution, fair coordination of cooperation, prosperity, security, economic development etc. In this case, the legitimacy of law is based on social facts that are perceived as the outcomes the law performance. The law is perceived as a tool in achieving some valuable goals/aims (instrumental rationality of law). However, these goals are chosen by reference to values and extra-legal norms.
4. **Procedural justice** is expressed by the fairness in law procedures and in such a style of *executio iuris* that is adequate to social needs and the type of culture.



Model 2. What really matters – law making or law implementation?

Procedural justice is the pragmatic set of recommendations on how to achieve fairness and transparency in the processes that resolve disputes and allocate resources in society. In the realm of legal proceedings, the procedural justice is connected to the due process (U.S.), fundamental justice (Canada), procedural fairness (Australia), and natural justice (other jurisdictions). Natural justice generally binds both public and private entities, while the U.S. concept of due process applies only to state actors. But in the U.S., there are analogous concepts like the fair procedure which can bind private parties in their relations with others.³

The content of legal rules and principles are relevant only if they refer to procedures and do not presume the final decision of the legal authority. However, many theories of procedural justice hold that the fair procedure leads to equitable outcomes, even if the requirements of distributive or retributive justice are not met.⁴ Hearing all parties before a decision is made (*audiatur et altera pars*) is one of many requirements ensuring that a process may be characterised as procedurally fair. When a legal rule or principle is applied it has to be applied to everyone in the same transparent manner without any form of discrimination and hidden presumptions or unproven assumptions.

The theory of procedural justice developed a variety of answers to the question of what are **the features of a procedure that make it just or unjust**. These views tend to fall into six main streams of opinion, which can be called models of procedural justice”

1. **The participation model.** The fair procedure is one that affords those who are affected by an opportunity to participate in the making of the decision. In the context of a trial, for example, the participation model would require that the defendant is getting an opportunity to be present at the trial, to put on evidence, to take part in cross-examination

³ L.B. Solum., *Procedural justice*, “Southern California Law Review” 2004–2005, vol. 78, p. 181–321.

⁴ T. Tyler, K. Rasinski, N. Spodick, *Influence of voice on satisfaction with leaders: Exploring the meaning of process control*, “Journal of Personality and Social Psychology” 1985, No. 48, p. 72–81.

of witnesses etc. those directly affected by the decisions should have a voice and representation in the process. Having representation affirms the status of group members and inspires trust in the decision-making system. This is especially important for weaker parties whose voices often go unheard.

2. **The transparency model.** The processes that are implemented should be transparent. Decisions should be reached through open procedures, without secrecy or deception.
3. **The unbiased approach and consistency model.** Fair procedures should guarantee that like cases are treated alike. Any distinctions “should reflect genuine aspects of personal identity rather than extraneous features of the differentiating mechanism itself”.⁵ Rules or procedures must be consistently followed, and impartially applied.

The officials carrying out the procedures are expected to follow some principles such as: “treating people with respect and dignity, making unbiased decisions and interpreting and applying rules consistently and transparently, giving people a voice and hearing their concerns and experiences, showing and encouraging trust by being sincere, caring and authentic, and trying to do what is right for everyone”.⁶ Impartial treatment is often identified with those procedures that generate relevant, unbiased, accurate, consistent, reliable, and valid information.

4. **The perception model.** Procedural justice is the degree to which someone perceives people in authority to apply processes or make decisions about them in a fair and just way.

⁵ R.T. Buttram, R. Folger, B.H. Sheppard, *Equity, equality and need: Three faces of social justice*, in: *Conflict, cooperation, and justice: Essays inspired by the work of Morton Deutsch*, eds. B.B. Bunker, M. Deutsch, San Francisco 1995, p. 272, <http://www.amazon.com/Conflict-Cooperation-Justice-Inspired-Deutsch/dp/0787900699> (access: 10.7.2015).

⁶ *Procedural justice*, Her Majesty’s Prison and Probation Service, Published 17 June 2019. <https://www.gov.uk/guidance/procedural-justice> (access: 20.8.2020 r.).

According to procedural justice theory, if people feel they are treated in a procedurally just way, they view people in authority as more legitimate and they respect them more. They are more likely to comply with the law and the authority's decisions. This is true even if the outcome of the decision or process is unfavourable or inconvenient. People feel affirmed if the procedures that are adopted treat them with respect and dignity, making it easier to accept even outcomes they do not like.⁷

5. **The outcomes model** – the fairness of the process depends on the correctness of outcomes. For example, if the procedure is a criminal trial, then the correct outcome would be the conviction of the guilty and exonerating the innocent. If the procedure were a legislative process, then the procedure would be fair to the extent that it produced culturally adequate legislation and unfair to the extent that it produced inadequate legislation.
6. **The cost-benefit model** – a fair procedure is one which reflects a fair balance between the costs of the procedure and the benefits that it produces. Thus, the cost-benefit approach to procedural fairness might in some circumstances accept false-positive verdicts which allow limiting the unwanted costs associated with the administration of the criminal process.

Tom Tyler made a major step in empirical research on procedural justice by his widely cited 1990 book on “Why People Obey the Law” and many other contributions to our knowledge.⁸ In many empirical

⁷ J. Brockner, *Making sense of procedural fairness: How high procedural fairness can reduce or heighten the influence of outcome favourability*, *Academy of Management Review* 2002, Vol. 27, p. 58–76; J. Brockner B. M. Wiesenfeld *The interactive impact of procedural and outcome fairness on reactions to a decision*. “Psychological Bulletin” 1996, No. 120, p. 189–208. M. Deutsch, *Justice and conflict*, in: *The handbook of conflict resolution: Theory and practice*, ed. M. Deutsch and P.T. Coleman, San Francisco 2000, p. 45.

⁸ T.R. Tyler, *Why people obey the law*, New Haven 1990. The book was republished in 2006 with a new afterword discussing more recent research and changes in his thinking since its initial publication. E.A. Lind, T.R. Tyler, *The*

studies, he proved that the legitimacy of law based on procedural justice is by far the most efficient way of law enforcement and may bring about voluntary obedience to the law.

Tyler and Huo theories of 2002 are based on surveys of people in different ethnic groups to understand their concepts of justice. They found that minority African-Americans and Hispanics have essentially the same concept of justice as majority whites but different experiences.⁹ They describe two alternative strategies for effective law enforcement:

- deterrence based on the fear of being punished: effective but inefficient;
- process based on procedural justice: efficient and effective.

The difference in efficiency follows because people who perceive that they may be victimized unfairly by law enforcement are less likely to cooperate. Tyler and Huo suggest that biased, unprofessional behaviour of police, prosecutors and judges not only produces concerns of injustice, it cripples law enforcement efforts by making it more difficult for police and prosecutors to obtain the evidence needed to convict guilty parties.

Tom Tyler proposed a four-component model of procedural justice that explains how people evaluate the fairness of group procedures using four distinct types of judgment.¹⁰

The model hypothesizes that people are influenced by two aspects of the formal procedures of the group: those aspects that relate to decision making and those that relate to the quality of treatment that group members are entitled to receive under the rules. Besides, people are hypothesized to be separately influenced by two aspects of the authorities with whom they deal: the qual-

social psychology of procedural justice, New York 1988; T.R. Tyler, R.J. Boeckmann, H.J. Smith, Y.J. Huo, *Social justice in a diverse society*, Boulder 1997.

⁹ T.R. Tyler, Y.J. Huo, *Trust in the law: Encouraging public cooperation with the police and courts*, New York 2002.

¹⁰ S.L. Blader, T.R. Tyler, *A four-component model of procedural justice: Defining the meaning of a 'fair' process*, "Personality and Social Psychology Bulletin" 2003, Volume: 29 issue: 6, pp. 747–758.

ity of decision making by those authorities and the quality of the treatment that they receive from them. The results support the hypothesis of the four-component model by finding that all four of the procedural judgments identified by the model contribute to overall evaluations of the fairness of group procedures.

Theories of Tom Tyler and many of his disciples were empirically confirmed by a team of scholars in the framework of the comparative project the fifth European Social Survey (ESS), carried out in 28 countries in 2010/11. Their study was based on data related to the legitimacy and efficiency of the police and courts only, without asking for the legitimacy of other law-making and law implementing institutions such as prosecutors, public administration etc.¹¹ This focus on police and courts is a serious limitation to general conclusions drawn from the statistical data. The trouble is that the police is trusted by a very high number of citizens in the USA and in the European Union and courts are trusted by a much smaller number of citizens and the parliaments are mostly distrusted by a strong majority of citizens.¹² In both Europe and the U.S., elected officials and the news media, that are critical to the very existence of democracy, received even lower marks than banks and big business leaders did.

About four-in-ten Europeans said they trust their parliament and the national news media (medians of 43% and 41%, respectively). Northern Europeans expressed higher levels of confidence in these two institutions: Roughly half or more people in the Netherlands, Sweden, Germany and Denmark said they trust the news media and parliament. Only about a third of British adults said they trust

¹¹ M. Hough, J. Jackson, B. Bradford, *Legitimacy, trust and compliance: An empirical test of procedural justice Theory using the European social survey*, in: J. Tankebe, A. Liebling (eds.), *Legitimacy and criminal justice: An international exploration*, Oxford 2013.

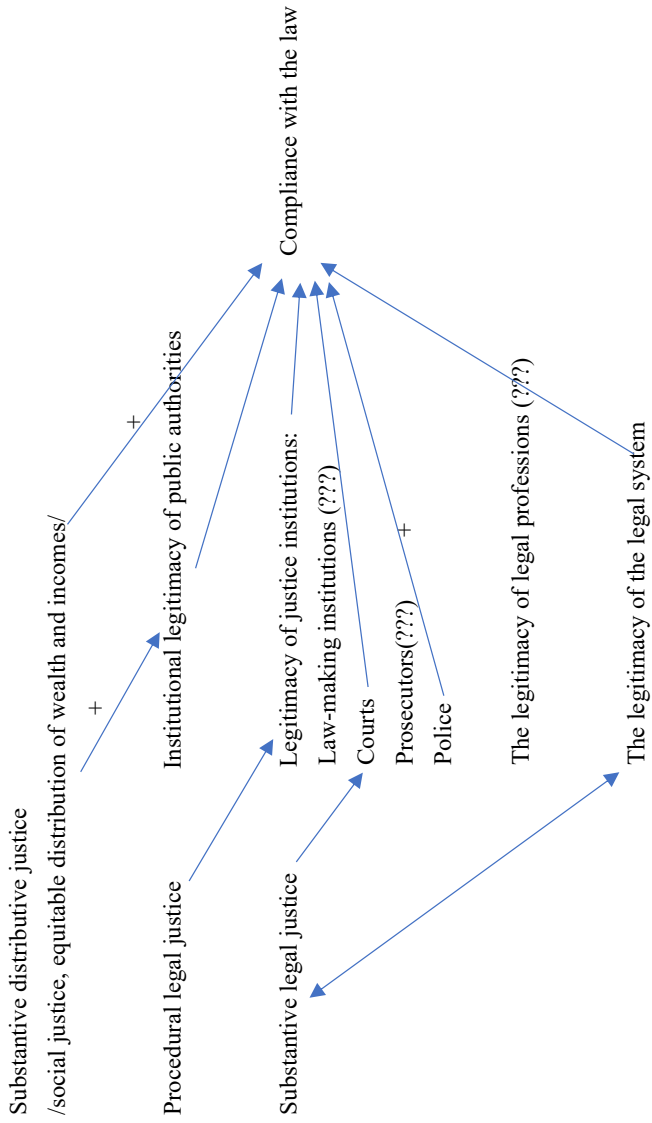
¹² C. Johnson, *Trust in the military exceeds trust in other institutions in Western Europe and the U.S.*, September 2018, Pew Research Center, <https://pewresearch.org> (access:25.5.2020). The military was the most trusted institution in all eight Western European countries. The level of trust was ranging from 84% in France to 66% in Spain.

the news media (32%) or the country's parliament (36%). These levels of trust were more similar to those found in the southern European countries of France, Spain and Italy.

Americans remain in the long run most confident in the military, small business, and the police. Gallup's long-standing Confidence in Institutions question was first asked in 1973, as the Watergate scandal unfolded, and has been updated at least annually since 1983, except 1992. Americans are asked whether they have a great deal, quite a lot, some or very little confidence in various institutions, and each institution is ranked by its combined "great deal" and "quite a lot" score. Just three institutions – the military (73% in 2019, 72% in 2020), small business (68% in 2019, 75% in 2020) and the police (53% in 2019, 48% in 2020) – have garnered majority levels of confidence in almost all polls Gallup has conducted on each measure over the past two decades. Confidence in small business (ranging between 57% and 75%) and the police (between 48% and 64%) has been rather stable. Despite the tensed relations police have got in 2020 with some communities, overall confidence in the police as an institution mostly endures. More than a third of Americans also express confidence in the Supreme Court (38% in 2019, 40% in 2020), the Presidency (38% in 2019, 39% in 2020) and organized religion (36% in 2019, 42% in 2020), while slightly less than a third have confidence in banks (30% in 2019, 38% in 2020), public schools and organized labour (29% in 2019).¹³

Fewer than one in four Americans have confidence in the criminal justice system (24% in 2019 and 2020), newspapers (23%) and big business (23% in 2019, 19% in 2020). Americans have the least confidence in television news (18% in 2019) and Congress (11% in 2019, 13% in 2020). The law-making institution i.e. the US Congress is regularly characterized by both lowest confidence among institutions and very low approval ratings. The criminal

¹³ Organized religion was the most trusted institution for the first decade in which Gallup measured confidence in institutions, being surpassed by the military for the first time in 1986. The data are quoted after reports published online by the Gallup and available as Gallup Poll Social Series works as well.



Symbol + means empirical corroboration of hypothesis, and symbol ??? means lack of empirical evidence.

Model 3. Varieties of Justice, Legitimacy, and the Duty to Obey the Law.

justice system is trusted by less than one fourth and the Supreme Court and the Presidency by about 40% of citizens. Even in 2020, the police is more trusted than above-mentioned institutions of law-making and law implementation.

These strange variations of the public trust shall be explained before we can conclude what kind of institutional legitimacy is followed by the obedience to the law. Higher trust in military and police than in parliaments, courts, and system of criminal justice seems to be inconsistent with a widely shared common sense opinion of professional lawyers who usually assume that the lawmakers and the judges are the most trustworthy legal authorities. We simply do not know to what extent low trust in lawmakers – that is a brute social fact in the US and in Europe as well – contributes to the real level of compliance with the law. Any assumption based on the positivist myth of rational lawmaker seems to be falsified by perceptions of citizens.

The following model 3 shows my hypothesis about the possible and highly probable link between the forms of justice, the variety of institutions that can be more or less legitimate, and the compliance with the law.

4. Reasons to disobey the law

What are the legitimate reasons to disobey the law? Should we obey the laws we cannot accept as we believe our moral or religious principles could be violated by a specific law? The rules of law serve a dual function: they both prevent crime and instruct us in the correct or at least tolerable manner of living. Rules consequently maintain order in any group or community by discouraging undesirable actions and – by default – promoting approved behaviour.

At their best, laws codify standards of behaviour that most people agree will result in the protection of public interest or the common good. The law generally fails when it attempts to legislate morality or even common decency because we cannot force people to be decent. But moral values shared by many people matter a great deal in interpretation and the execution of the law. When people

feel strongly about a particular law, they may choose to break the law. They may do so for convenience, personal gain or deep personal conviction.

If you disobey the laws you consider wrong you have made a choice and must suffer the consequences of your choice. Socrates was accused of violating the laws of his city. He went to trial and was found guilty and sentenced to death. His friends urged him to leave the city and take refuge somewhere else (many other cities would have welcomed him). He refused because if he didn't approve of the laws of his city he should have said so before the trial. By living in the city he was consenting to the laws and government of the city and he would be a hypocrite if he didn't continue to live by those laws just because they went against him.

Whether one's reason for lawbreaking is serious or moral, a common thread remains: that is, there is a penalty to be paid if one is caught. How harsh is the penalty for breaking the law? How easily could you get away with breaking the law? Whether or not the penalty is "worth it" can only be decided by the individual and she or he shall have some reasons to make a choice.

Most of the time, following the law, is the best course, but occasionally breaking it is the right thing to do. What are the right and serious reasons to disobey the law? If one's objection to the law is based on laziness, selfishness, or greed, most of the persons would not agree with such reasons for disobedience to the law. Philosophy of law, however, proposed some good reasons to disobey. The first and strongest reason to disobey the positive law is the lack of substantive justice; Saint Thomas elaborated the natural law principle *lex iniusta non est lex*. Gustav Radbruch, after the II World War and atrocities of Nazism, proposed a weaker variety of the same argument referring to substantive justice. His famous formula told us *lex iniustissima non est lex*. Only the law that is in the highest degree unjust or extremely unjust shall not be regarded as worthy of obedience. It is not easy to find out where is a demarcation line between simply unjust and extremely unjust law. Without the moral criteria of an individual, we can not solve this problem in a purely legalistic manner.

In the 50' Lon Fuller developed his idea of the inner morality of law relating it to procedures, and not to substantive justice. We may conclude this idea that when the lawmakers or law execution authorities do not follow the rules of inner morality of law, the legitimacy of law is so low that we have no duty to obey this specific law. *Executio iuris* is morally questionable or unacceptable, systemic lack of procedural justice, far-reaching corruption of public authorities, frequent law-breaking behaviour of public authorities could be relevant examples of disregard to inner morality of law and thus may be perceived as good reasons to disobey legal rules. Fuller did not draw such a conclusion from his philosophical idea, but it seems feasible to justify disobedience by referring to Fuller's eight standards of procedural decency of the law.

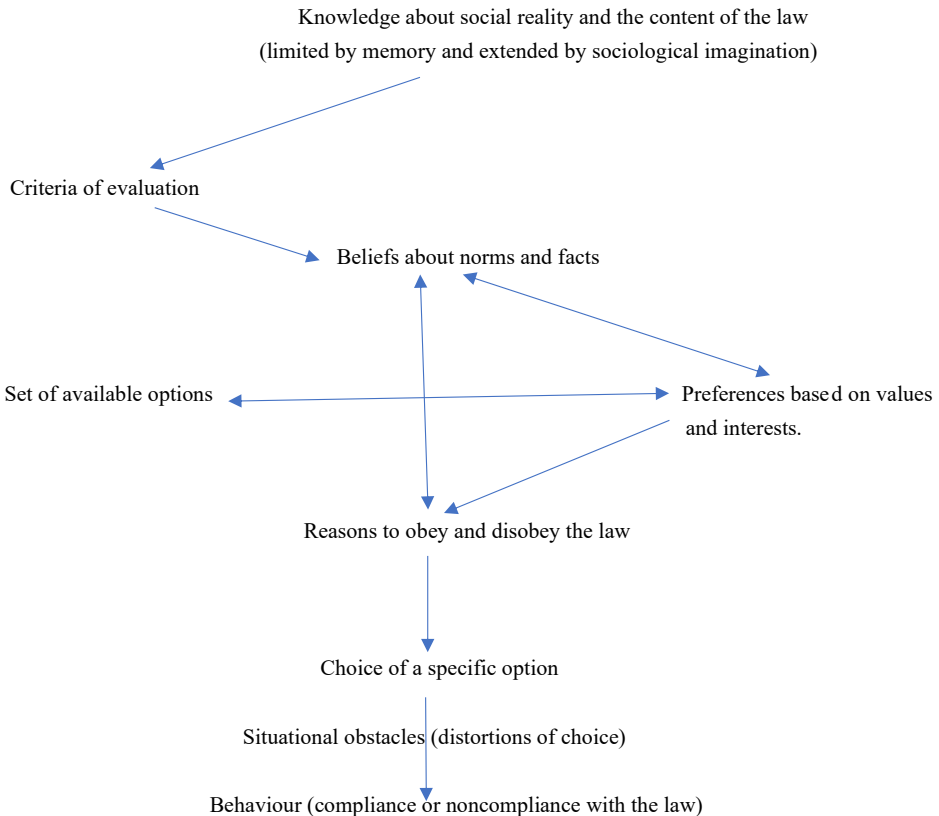
During the military occupation of the country, the law is imposed by the foreign political power without the consent of the majority of citizens of an occupied State. Thus the law is imposed by an illegitimate authority and there are no convincing moral reasons to obey such a law. Most resistance movements in the history of wars appealed to their members by this sort of argument.

If you don't agree with the laws of the society you live in you should work to change those laws. Even if it means going to jail. The attitude of civil disobedience is explained by Henry David Thoreau in his essay of that title. He spent time in jail for his resistance to what he believed to be unjust laws. Mahatma Gandhi and Martin Luther King, Jr. are other people who chose to accept the punishment for disobeying unjust laws to get the laws changed.

If there are laws you strongly object to, you should take action to change the law. If enough people agree with you, then you should be successful. If most people disagree with you, then you just have to accept the law or leave the society in question. People used to go to jail to protest laws they saw as unjust; not because they felt that they deserved to be in jail, but because they recognized that they were breaking the law even if it was an unjust law. Somehow, recent protesters like Edward Snowden believe that because they disagree with the law, they shouldn't face consequences for breaking it.

5. Balancing of reasons to obey and reasons to disobey

Is it feasible in the everyday performance of the legal norms and institutions that persons can systematically balance their reasons to obey and reasons to disobey the law? How complex is normative reasoning on substantive justice of the law that one should be able to perform to make a rational choice based on the method of balancing reasons? The following model 4 shows the complexity of this reasoning and its indispensable components.



Model 4. The Reasoning and Choice of the Mode of Behaviour.

This model suggests that an extremely complicated and sophisticated normative reasoning would be necessary to know substantive reasons to obey or disobey the law, which in turn influences human choice and the mode of behaviour. There are numerous and variable factors that go into the differences in modes of behaviour of persons who should obey the law. According to the model 4, the chosen mode of behaviour is seen as either mandatory or discretionary behaviour and as either compliance or noncompliance with the law.

6. Conclusions

Some conclusions seem to be substantiated by the very high level of complexity of the normative reasoning that can be performed by a reasonable person only in rare cases:

1. Moral intuition and deeply rooted habits are more frequently needed than sophisticated reasoning in the psychological effort to balance the reasons to obey/disobey the law in general or a specific law. Moral reasoning and cultural context matter more than legal sophistication of persons subject to the law. The art of interpretation is harder to command than the use of moral feelings and the common sense.
2. The assessment of the quality of reasons seems to be hardly feasible without nonlegal values and criteria. It is a pragmatic necessity of calling moral values and norms for assistance in the evaluation of positive and negative reasons to obey or disobey the law.
3. The legitimacy of law based on substantive and procedural justice and the legitimacy of institutions dealing with the law implementation (such as police and the courts) is more conducive to the law compliance than the threat of sanctions and the trust in law-making, elected institutions. Styles of law execution and procedural fairness deserve much more attention than the assumed rationality of lawmaking in the machinery of governance.

STRESZCZENIE

Powody posłuszeństwa i nieposłuszeństwa wobec prawa:
pragmatyczna konieczność odwołania się
do legitymizacji instytucji stosujących prawo
i do sprawiedliwości proceduralnej

Chciałem pokazać mocne racje empiryczne, dowodzące, że posłuszeństwo wobec prawa jest oparte bardziej na sprawiedliwości proceduralnej niż na sprawiedliwości materialnej, ponieważ ocena tej drugiej wymaga bardzo wyrafinowanego rozumowania. Natomiast sprawiedliwość proceduralna jest zrozumiała na podstawie zdrowego rozsądku i praktycznego doświadczenia obywateli stykających się z działaniami instytucji egzekwujących prawo, a zwłaszcza policji i sądów. Zmienną pośredniczącą jest legitymizacja instytucji egzekwujących prawo, takich jak policja i sądy. Z powodu niskiego zaufania i aprobaty dla instytucji stanowiących prawo, jak parlamenty i rządy, ich legitymizacja jest wątpliwa. Dlatego instytucje prawotwórcze nie są zdolne do wzmacniania poczucia moralnego obowiązku posłuszeństwa wobec prawa wśród podmiotów prawa.

Słowa kluczowe: posłuszeństwo wobec prawa; zaufanie do instytucji; legitymizacja instytucji stosujących prawo; sprawiedliwość proceduralna; sprawiedliwość materialna.

SUMMARY

Reasons to obey or disobey the law:
pragmatic necessity of recourse to the legitimacy
of the law-implementing institutions
and procedural justice

I wanted to show that there is a strong empirical evidence that obedience to the law is based rather on procedural justice than on substantive justice, because the assessment of substantive justice of the law requires a very sophisticated normative reasoning. Procedural justice is comprehensible by a common sense based on practical experience of citizens who deal with the law executing institutions such as the police and the courts. The intermediary variable is the legitimacy of the law executing institutions

such as the police and the courts. Due to a low level of trust and approval of the law-making institutions such as parliaments and governments their legitimacy is questionable, and thus the law makers cannot foster the moral duty to obey the law among subjects to the law.

Key words: obedience to the law; trust in institutions; legitimacy of the law implementing institutions; procedural justice; substantive justice

BIBLIOGRAPHY

- Adams R., *The expressive powers of law: theories and limits*, Cambridge MA 2015. <http://www.law.uchicago.edu/news/why-do-people-obey-law> (access:15.4.2020).
- Blader S.I., Tyler T.R., *A four component model of procedural justice: Defining the meaning of a 'fair' process*, "Personality and Social Psychology Bulletin" 2003, Vol. 29.
- Brockner J., *Making sense of procedural fairness: How high procedural fairness can reduce or heighten the influence of outcome favourability*, "Academy of Management Review" 2002, Vol. 27.
- Brockner J., Wiesenfeld B.M., *The interactive impact of procedural and outcome fairness on reactions to a decision*, "Psychological Bulletin" 1996, No. 120.
- Deutsch M., *Justice and conflict*, in: *The handbook of conflict resolution: Theory and practice*, eds. M. Deutsch, P.T. Coleman, San Francisco 2000.
- Hough M., Jackson J., Bradford, B. *Legitimacy, trust and compliance: An empirical test of procedural justice theory using the European social survey*, in: *Legitimacy and Criminal Justice: An International Exploration*, eds. J. Tankebe, A. Liebling, Oxford 2013.
- Johnson C. *Trust in the military exceeds trust in other institutions in Western Europe and the U.S.*, September 2018, Pew Research Center.
- Lind E.A., Tyler T.R., *The social psychology of procedural justice*, New York 1988.
- Procedural justice*, Her Majesty's Prison and Probation Service, Published 17 June 2019, <https://www.gov.uk/guidance/procedural-justice> (access:20.8.2020).
- Solum L.B., *Procedural justice*, "Southern California Law Review" 2004–2005, Vol. 78.
- Tyler T.R., Rasinski K., Spodick N., *Influence of voice on satisfaction with leaders: Exploring the meaning of process control*, "Journal of Personality and Social Psychology" 1985, No. 48.

Tyler T.R., *Why people obey the law*, New Haven 1990.

Tyler T.R., Boeckmann R.J., Smith H.J., Huo Y.J., *Social justice in a diverse society*, Boulder 1997.

Tyler T.R., Huo Y.J., *Trust in the law: Encouraging public cooperation with the police and courts*, New York 2002.

