

# Law and Punishment: Authority, Respect, and Compliance

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**Abstract:** This article challenges the traditional view that the effectiveness of law is solely dependent on the deterrent power of punishment. It explores why people comply with the law even without the threat of punishment, arguing that respect for the law's authority and moral legitimacy are more significant factors. The essay discusses the authority of law rooted in moral norms and social contract theory, and questions the necessity and morality of punishment. It suggests alternatives to punishment, such as restorative justice and preventive measures, which can achieve similar ends without intentional harm. The conclusion emphasizes that law should be observed due to mutual respect and commitment, which are the foundations of society.

**Keywords:** Law and Authority; Moral Legitimacy; Punishment Alternatives

## 1. Introduction

Traditionally, the effectiveness of law has often been thought to rely on the deterrent power of punishment. However, with the development of society, people have begun to question whether this close connection between law and punishment is the only viable model. In reality, we often see that even when punitive measures are unclear or not strictly enforced, people still voluntarily comply with the law. This leads me to consider: how closely tied are law and punishment? Is the authority of law sustained solely through punishment? This article aims to explore why, even in the absence of punishment, the law can still be upheld, and to examine other effective mechanisms that promote adherence to the law. In this essay, I argue that the law should be observed even in cases where no punishment is enforced. There are two reasons for this. First, the public's motivation for obeying the law stems from respect for the law's authority rather than the fear of punishment. Second, punishment itself is not necessary in terms of obeying the law - punishment lacks

moral justification and efficiency in yielding positive outcomes. Viable alternatives can fulfill its intended role effectively.

## 2. Authority of the Law

People obey the law, first and foremost, because of their respect for the authority of the law. I agree with Locke (1689) that the authority of law originates from its protection of natural rights and the consent of the governed. I will examine these two points respectively in the rest of the section.

### 2.1 The Authority of the Law Derives from the Moral Legitimacy of the Rules.

Moral norms, as the behavioral standards endorsed by society (Schein & Gray, 2017; Gouldner, 1960), form the basis of societal values. Laws, by codifying these norms, gain inherent legitimacy and rationality from moral rectitude. When laws align with society's moral norms and values, they fulfill the public's desire for justice and fairness, earning their conscious approval and support, not just compliance through fear. This moral legitimacy contributes to the law's enduring stability and strength. In contrast, laws that are not morally justifiable, even if they can be sustained by punishment in the short term, have difficulty maintaining their authority and effectiveness in the long term, as in the case of historically unjust laws such as apartheid laws in South Africa.

From this perspective, we can understand that it is the moral justification of the rule that is the primary motivation for its behavior. In the 1990s, Tom Tyler (2006) conducted a study in the Chicago area on why people obeyed the law. The study found that people's compliance with the law were largely influenced by moral judgements rather than judgments of risk of being caught and punished for breaking the law. While there may be critics who argue that cultural and social diversity brings about differences in moral standards (Schwartz, 1994; Kluckhohn & Strodtbeck, 1961), this does not mean that the law cannot rely on moral

standards. By emphasizing universal moral principles, the flexibility and adaptability of the law, and its interpretation and application, the law can maintain its legitimacy and authority while respecting cultural diversity. Even positivist jurists do not deny the influence of morality on law. Austin (1832), for example, noted that the actual existence of man-made law often aligns with social morality and divine law.

## **2.2 The Authority of the Law Also Comes from the Voluntary Cession of Rights by Citizens.**

In society, citizens voluntarily give up some of their freedoms and rights to the government in exchange for its protection and a stable social order - a form of social contract (Locke, 1689; Rousseau, 1762). Laws enacted by the government gain legitimacy and authority by reflecting the voluntary empowerment of society. At the same time, this voluntary empowerment can be not only explicit but also implicit consent (Locke, 1689). For example, choosing to live in a particular society and enjoying the protection and benefits it offers is considered a form of implied consent.

I argue that implied consent reflects that different parties to the agreement internalizes the goal of the social agreement. By reflecting the balance between individual rights and the common good, the law builds an organized society. Citizens understand and accept these rules through a process of education and socialization. As Brian Z. Tamanaha (2004, 2017) noted, the socialization process leads most people to obey the law. Such conscious compliance not only reduces the cost of enforcing the law, but also demonstrates citizens' acceptance of and support for the rules.

From this perspective, we can comprehend citizens' voluntary compliance with rules for the public good. For instance, traffic regulations are designed to maintain order and ensure the safety of all road users. A study on traffic safety revealed that individuals' self-awareness and sense of responsibility significantly influence their adherence to traffic rules (Feng, Z., Ji, N., Luo, Y. et al, 2021). Pedestrians rely on mutual compliance, turning rule-following into a collective duty that maintains traffic order and public safety. This is in line with social contract that joint adherence to rules safeguards the rights and well-being of all.

Other critics may argue that the social contract

assumes an equal bargaining environment that is practically impossible to achieve, bringing the authority and legitimacy of law into question (Gauthier, 1986). However, in modern democracies, citizens have the right to participate in the process of law and policy making through elections, voting and public debate and there has been a significant increase in efforts by governments to engage citizens in public decision-making processes (OECD, 2023). Democracies provide mechanisms that enable different groups to express their views and influence decision-making. The fairness and legitimacy of laws are strengthened through continuous improvement of laws and policies. Although the right to participate in collective rule-making through representative democracy has been undermined in practice due to various practical obstacles, its legitimacy in theory is largely unquestionable.

## **3. Unnecessity of Punishment**

Of course, in society we have to recognize that the practice of punishment is ubiquitous, but this does not mean that the ubiquity should not be questioned. I will argue that punishment is neither morally justifiable nor capable of achieving positive results, and is not necessary to achieve social order and justice. Here I define punishment as having at least three characteristics: it is imposed by the state or an authorized body, it is a mandatory burden and it is condemnatory (Hoskins, 2021).

Martin Luther King Jr. (1966) emphasized that one cannot achieve just ends through unjust means because "the means are the seed and the end is the tree." Punishment involves a willful violation of the rights and dignity of the individual and therefore requires a sound moral basis to justify it (Boonin, 2008). Unfortunately, despite various philosophical approaches, the quest for a morally sound justification for punishment remains elusive, as both consequentialist and retributivist perspectives encounter insurmountable challenges in aligning with our intrinsic moral compass.

Consequentialism holds that punishment is intended to produce positive consequences, such as deterring crime, restoring social order, and promoting social well-being (Bentham, 1780; Stephen & Warner, 1993). However, in line with Kantian ethics, this view may treat people merely as means to achieve a greater societal good, rather than respecting their intrinsic value

as individuals. For example, to achieve greater overall utility, it may be possible to punishing the innocent, or not punishing the guilty, or where the crime is disproportionate to the level of punishment. This is clearly contrary to our moral intuitions.

Retributivism holds that punishment is meant to be retributive for criminal behavior regardless of consequences (H. Morris, 1968; N. Morris, 1974; Murphy, 1973). But even the intuition in some extreme cases that offenders deserve punishment does not prove that all offenders deserve punishment. Like consequentialism, it fails to justify why behaviors morally justified should be legally punished, or why morally culpable individuals who haven't broken the law should be punished.

Indeed, alternative methods exist to achieve the same or similar ends as punishment that don't resort to intentional harm to the offender. For example, education, restorative justice, social support, and preventive measures may prove just as effective in both averting criminal acts and remedying the societal consequences of crime. A World Bank report (2020) notes that credit scoring systems significantly increase the trustworthy behavior through incentives rather than penalties. Even in the absence of immediate legal penalties, individuals concerned about a decline in their credit scores still consciously pay their bills on time.

I suggest that restorative justice can be an alternative to punishment, as it does not involve intentional harm to the offender, but rather focuses on repairing the harm caused by the criminal act. In this case, offenders are granted the opportunity to rectify their actions, potentially amending their relationship with victims and society (Lanni, 2021). Some critics might say that required reparations might not take moral responsibility seriously and could be too forgiving (Braithwaite, 2002). It is important to note, however, that mandatory reparation does not mean ignoring moral responsibility, but rather concretizing it. Such reparations should comprehensively assess all losses suffered by the victim, and possibly secondary victims, including economic and non-economic losses, in order to balance the loss to the victim, the responsibility and capacity of the offender and the justice of society.

#### 4. Conclusion

Law, grounded in moral legitimacy, mirrors the

voice of our shared humanity. People obey the law out of respect for its authority, not fear of punishment. In this essay, I have argued for legal authority based on natural rights and implied social contract. I also argued that punishment is morally unjustified and ineffective; without it, alternative measures can achieve the same aim. In all, law should be observed even in the absence of penalties, because what makes law important are the mutual respect and commitment that form the bedrock of our societies.

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