On the Virtuousness of Certain Refusals to Comply with Legal Demands Prompted by Other Normativities

Sobre la virtuosidad de ciertas negativas a cumplir con exigencias legales motivadas por otras normatividades

Sobre a virtuosidade de certas recusas de cumprimento de requisitos legais motivadas por outros regulamentos

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Abstract

This paper discusses how virtue ethics, with its consideration of the context in which moral agents must conduct themselves, can help to shed light on the circumstances under which a deliberate decision to not comply with a given legal mandate may be regarded not only as morally permissible but even as the most ethical way to conduct oneself. Both substantive 'no harm' and due diligence conditions are involved in determining this. Furthermore, the article examines how the decision to defy a legal command consciously does not entail a denial of normativity but, instead, can sometimes presuppose a will to comply with a normativity seen as having a greater priority than the legal one by the moral agent. Existential and emotional factors may shape this determination.

Keywords

Virtue ethics; civil disobedience; phenomenology; natural law; philosophy of law.

Resumen

En este artículo se analiza la forma en que la ética de la virtud, con su consideración del contexto en el que deben comportarse los agentes morales, puede arrojar luz sobre las circunstancias bajo las cuales una decisión deliberada de incumplir un determinado mandato legal puede considerarse no solo como permisible desde lo moral sino incluso como la forma más ética de comportarse. En esta determinación intervienen condiciones sustantivas de "no hacer daño" y de debida diligencia. Además, se examina cómo la decisión de desafiar un mandato legal con plena conciencia no implica una negación de la normatividad, sino que a veces puede presuponer una voluntad de cumplir con una normatividad que el agente moral considera más prioritaria que la legal. Por ende, los factores existenciales y emocionales pueden configurar esta determinación.

Palabras clave

Ética de la virtud; desobediencia civil; fenomenología; ley natural; filosofía del derecho.

Resumo

Este artigo discute como a ética da virtude, com sua consideração do contexto em que os agentes morais devem se comportar, pode esclarecer as circunstâncias em que uma decisão deliberada de não cumprir um determinado mandato legal pode ser considerada não apenas como moralmente permissível, mas até mesmo como a maneira mais ética de se comportar. As condições substantivas de "não causar dano" e a devida diligência estão envolvidas nessa determinação. Além disso, é examinado como a decisão de desafiar um mandato legal com plena consciência não implica uma negação da normatividade, mas pode, às vezes, pressupor uma disposição de cumprir uma normatividade que o agente moral considera mais prioritária do que a legal. Assim, fatores existenciais e emocionais podem moldar essa determinação.

Palavras-chave

Ética da virtude; desobediência civil; fenomenologia; lei natural; filosofia do direito.

"If you are disputing with people who accept no authority, you must resort to natural reasons."[1]
"Then Peter and the *other* apostles answered and said, We ought to obey God rather than men."[2]

Introduction

At first glance, the possibility of non-compliance with what is demanded by the tenets of positive legal systems as contrary to morality seems to be non-controversial. For the present paper, I am exploring such acts as encompassing all deliberate refusals to do what the law says, regardless of whether they qualify under the subtype described by the notion of civil disobedience.

Indeed, some authors, such as Frédéric Gros, consider that civil disobedience is relevant when exercised by those partaking in a group sharing beliefs concerning elements suggesting why a legal mandate should not be obeyed. For him, "on parlera de dissidence ou d'objection de conscience quand un individu isolé (soit le « lanceur d'alertes ») prend le risque de dénoncer les faillites d'une institution, l'ignominie d'un système. La désobéissance civile suppose au contraire un « désobéir ensemble » qui fait battre le cœur du contrat social".[3]

For clarity purposes, it is also important to indicate that this paper explores *direct* challenges in terms of refusals to comply with a morally problematic law. Thus, indirect defiance that consists of not complying with legal norms, the content of which is morally adequate, in order to draw attention to the necessity of addressing vicious or defective ones, is beyond the purposes of this paper.

The possible morality of intentional non-compliance with legal commands may sometimes result from choices motivated by a perceived clash between the requirements of different normativities—for instance, a legal and a moral one, which for some has special status over others—[4] pulling in different directions. Such a situation requires a decision to be made by moral agents. If one considers that there is at least *prima facie* a certain superiority of the demands of morality, a choice in favor of it can be seen as reasonable, at the very least. What is more, from an existentialist and phenomenological perspective, a situation of this sort can be seen as one in which the "plight" of humans to be forced to make choices is made apparent and in which "authentic" or consciously chosen roles and their emotional implications lead one to decide in favor of one normativity against another.[5]

1 Samuel Gregg, *The Essential Natural Law*, Fraser Institute, 2021.
2 Acts 5: 29, King James Version Bible.
3 Frédéric Gros, *Désobéir*, Paris, Albin Michel, 2017, electronic version. Part of the text can be translated as: "we will speak of dissent or conscientious objection when an isolated individual [„,] takes the risk of denouncing the failures of an institution, the ignominy of a system. Conversely, civil disobedience presupposes a "joint disobedience"…" (my own translation).
4 Cf. Philippa Foot, "Morality as a System of Hypothetical Imperatives," in *The Philosophical Review*, 81 (1972), pp. 311, 314.
5 Cf. Steven Crowell, "*Sorge* or *Selbstbewußtsein?* Heidegger and Korsgaard on the Sources of Normativity," in *European Journal of Philosophy*, 15 (2007), p. 325; Scott M. Campbell, *The early Heidegger's philosophy of life:*

However, some philosophical studies on the question suggest otherwise. For instance, some interpretations have suggested that deontology is not *necessarily* supportive of such a conclusion, considering how, in their opinion, many moral arguments are mostly contrary to deeming acts of rebellion as ethical. At the same time, natural law accounts, which identify standards humans must observe,[6] would be purportedly also contrary to certain challenges against positive law, i.e., lex lata or the human-made laws under a given legal system. I deem such general conclusions unwarranted for reasons I will explore later below. Likewise, according to certain authors, the prevalent virtue ethics traditions would be, for the most part, also contrary to upholding the morality of the defiance of the law of States, given the idea that law-abidance is to be seen either as a virtue or as conducive to the cultivation of virtues.[7]

It would presumably follow that only pragmatic and pluralist consequentialist stances would provide adequate grounds for deeming the defiance of the law morally correct, inasmuch as acts such as those of civil disobedience could amount to strategies capable of bringing about greater social welfare when they successfully manage to persuade others of the content of the messages that are communicated by means of challenges against the law. This would make disobedience, provided that it is public and can be known by others, an important participatory initiative that leads to a "moral dialogue" with authorities, "either to bring about a better legal system or to ensure that the present system remains vital and reflective."[8]

Nevertheless, an in-depth examination can support the idea that virtue ethics—and, tangentially and by tangentially, ethics of care, considering the virtues of solidarity and charity—may also favor certain acts of disobedience of the law. In this article, I attempt to demonstrate why it can provide grounds for deeming *certain intentional* acts of refusing to comply with what the law commands as not only consistent with but also sometimes demanded by morality. Two considerations support this idea:

Firstly, virtue ethics pays attention to context to make (hard) moral choices, including the fact that the coherency or conduciveness of positive law vis-à-vis morality is (merely) contingent, whereas educative moral messages may some-

facticity, being, and language, New York, Fordham University Press, 2012, pp. 29–31, 36, 40. Concerning the existentialist responsibility for choices moral agents make, see "Albert Camus – The Fall," *Philosophize This!*, available at: https://www.philosophizethis.org/transcript/episode-170-transcript, last visit: 16 January 2023.

6 And which derive either from the Divinity, are rationally identified, can be inferred from considerations of what is good, or else, depending on the perspective, Cf. Mark Murphy, *The Natural Law Traditon Tradition in Ethics*, The Stanford Encyclopedia of Philosophy, 2019.

7 Cf. Christoph Horn, "Law, governance, and political obligation," in Marguerite Deslauriers and Pierre Destrée (eds.), *The Cambridge Companion to Aristotle's Politics*, Cambridge, Cambridge University Press, 2013, pp. 227–228; G. Alex Sinha, "Virtuous Law-Breaking," in *Washington University Jurisprudence Review*, 13 (2021), pp. 210–212, 219–224; Harry Prosch, "Toward an Ethics of Civil Disobedience," in *Ethics*, 77 (1967), pp. 178–190.

8 Harry Prosch, op. cit.; Kimberley Brownlee, *The Moral Status of Civil Disobedience* (Doctor of Philosophy Thesis), Oxford, University of Oxford, 2006, pp. 91–92.

times be better expressed through calls for change or contextualized refusal to obey; 2) secondly, the acknowledgment that several virtues may be at odds with each other and a resolution of this antinomy may require the prevalence of a given virtue required by *eudaimonia* or moral character considerations over (the) others in a given specific case—which is made possible by the prior contextuality consideration.

1. The contingency of the lack of immorality in the content or implementation of the law

Some interpretations of prominent virtue ethics narratives have posited that this moral account is not particularly well suited to holding that conscious decisions made by moral agents to refuse to comply with what the law requires of them are adequate, save for exceptional circumstances.

In this regard, attention has been drawn to the fact that the Aristotelian account considers that even in a suboptimal *polis*, law-abidance is to be deemed a virtue or, at worst, conducive to the development of virtues, considering that this "loyalty" leads to a) social stability; and b) the education of the addressees of legal mandates in ways that permit the members of a society to act in accordance with the spirit of its constitution. Even if one is considered deviant—which is the case of democracy for Aristotle—it still plays important social roles, such as permitting the division of labor and the correlated prevention of autarchy, which are seen as essential for the *zoon politikon*. Accordingly, with the (possibly implied) exception of cases of tyranny in which individuals are treated as slaves, he considers law-abidance virtuous due to *functional* reasons.[9]

Following in the footsteps of Aristotle concerning the issues under discussion, Thomas Aquinas is considered to largely concur with the prior considerations. It is true that he expressly addressed the possibility of acting against tyrants in extreme cases when doing so does not lead to greater social problems or evil.[10] But in other cases, one ought to think of the possibility of generating situations of anarchy affecting what was a "reasonably just State" (favored by those challenging the existence of a special State right to use force).[11] Under those circumstances, the possibility of protecting rights from the abuses of others—which Enlightenment and human rights ideas call for—[12]would be at risk. On the other hand, in my opinion, concerning tyrannies, the unlikelihood of success,

9 Cf. Christoph Horn, op. cit., pp. 228–235.

10 Cf. G. Alex Sinha, op. cit., pp. 222–224; N. P. Swarts, "Thomas Aquinas: On Law, Tyranny and Resistance," in *Acta Theologica*, 30 (2010), pp. 152–153.

11 Patrick Durning, "Political Legitimacy and the Duty to Obey the Law", in *Canadian Journal of Philosophy*, 33 (2003), p. 379; Leslie Green, *The Authority of the State*, Oxford, Oxford University Press, 1988, pp. 240—247.

12 Nicolás Carrillo-Santarelli, *Direct International Human Rights Obligations of Non-State Actors: A Legal and Ethical Necessity*, Oisterwijk, Wolf Legal Publishers, 2017, pp. 43-44, 52, 56-57, 124, 289.

and the ensuing harsh repression by the governing regime are factors that must be considered. For the most part, under the theory of Aquinas, law compliance is, as for Aristotle, considered virtuous—either a virtue in itself or as an attitude facilitating or having the propensity to develop virtues.[13]

That said, in my opinion, the distinction between human-made and natural law considerations and demands[14] provides a kernel and seed for broadening the possibility of deeming conscious refusals to comply with the law as virtuous, even if a situation is not one of extreme gravity. Why so? To my mind, the admission that there might be tensions or contradictions between the human-made law and one of the other categories could justify a moral agent thinking that refusing to comply with the former so that the latter is not impinged upon is the course of action most consistent with morality.

Some authors have accordingly deemed it appropriate to fail to honor the law when doing so would make one breach natural law[15]—I disagree with the argument that would say that this is a result of the positive law supposedly being "invalid" in the eyes of natural law whenever contradictions between the two normativities exist. To my mind, nothing of the sort is either required or automatically flowing from a certain natural legal perspective. I will expand upon these arguments in the second part of this text, dedicated to exploring how the demands of alternative normativities may pull in directions different from those of positive law.

Even if one fails to subscribe to a natural legal approach, a similar conclusion can be reached under other extra-legal perspectives. For instance, critical legal studies have challenged the idea of the law as being necessarily neutral, independent, and objective.[16] Theories under this stance can thus justify the critical examination of whether obeying the supposedly neutral law, the legitimacy of which some draw from its supposed neutrality,[17] is always adequate or perhaps sometimes problematic.

Admittedly, one cannot ignore that certain interpretations of natural law could be seen as contrary to these conclusions from natural law or a critical perspective, either a) due to the consideration that the message sent to members of society and the possible consequences of the transgression could be functionally (character formation-wise) worse than those of not rebelling against the legal mandate in question; or b) because subordination and docility toward to the

13 Cf. Alex Sinha, op. cit., pp. 222–223.
14 Cf. John Finnis, *Natural Law & Natural Rights*, 2nd edition, Oxford, Oxford University Press, 2011, pp. 351, 360.
15 Cf. Ibid.; Javier Hervada, *Introducción crítica al Derecho Natural*, Bogotá, Temis, 2000, p. 99; Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church*, Vatican City, Libreria Editrice Vaticana, 2004, paras. 400–401.
16 Cf. Andrea Bianchi, *International Law Theories*, Oxford, Oxford University Press, 2016, p. 136.
17 Cf. Ibid., p. 32.

(positive) law, save for extremely dire cases, would be naturally- or divinely-mandated or virtuous.[18]

I believe that these objections are not fully persuasive, even under a natural legal account. For one, because a) education promoted by law compliance is *instrumental*, just as the law is,[19] and so is not an unconditional good in itself, but rather can be good given the circumstances, *provided that* what is being transmitted is, at the very least, not contrary to morality. Hence, instructing docility toward injustice—e.g., discrimination against members of certain groups, the toleration of which is contrary to the virtues of solidarity, charity, or self-respect,[20] depending on whether the objector belongs to such groups or not—is not only undesirable but also unethical.

It is important to note that even when a society is not ruled for the most part by a despotic or unjust regime *on the whole*, there may be piecemeal applications of legal provisions that, generally or under certain circumstances, are contrary to morality due to their having vicious or defective content or effects in their implementation—not so much necessarily for their having been adopted through illegitimate procedures, save for exceptional cases.[21] In other words, the non-immorality of abiding by the law is *contingent* rather than general.[22] Law compliance is not morally praiseworthy *in se* and could well turn out to be contrary to ethics depending on its content and/or implementation. In political philosophy, a similar argument has been construed as implying that there is no general "duty to obey the law." Curiously, both those who hold that the legitimacy of States rests upon there being such a duty for the majority of their subjects in a given case (e.g., Simmons, Wolff, Copp, Pitkin, Green, Klosko, or Raz) and those who argue that such legitimacy can exist even absent such duty (e.g., Smith, Reiman, Greenawalt, Morris, Sartorius, Waldron, Wellman, Edmunson, Buchanan), coincide in accepting that general imperative may be either present or absent depending on the circumstances.[23]

Following Aristotle's thoughts, while it is true that he implicitly mentions that the "just" individuals abide by the law by saying that "the violator of Law is Unjust," his words suggest a conditionality insofar as he immediately goes on to say that what is just is that which is "apt to produce and preserve happiness and its ingredients for the social community." Indeed, the Law (in capital letters) he refers to can be interpreted as being that which, in turn, *complies* with this requirement.[24] This explains why he goes on to add that:

18 Cf. G. Alex Sinha, op. cit.
19 Cf. Ibid., pp. 215, 227; Christoph Horn, op. cit., pp. 231, 235, 242–243.
20 Cf. G. Alex Sinha, op. cit., p. 250.
21 Cf. Kimberley Brownlee, op. cit., pp. 88–91.
22 Cf. Ibid., 70, 74–75; Harry Prosch, op. cit., pp. 190–191; G. Alex Sinha, op. cit., pp. 228–229, 234, 240.
23 Patrick Durning, op. cit., pp. 373–374.
24 Aristotle, *The Nicomachean Ethics*, electronic version, available at <https://www.gutenberg.org/files/8438/8438-h/8438-h.htm>, last visit: 26 April 2023.

"[T]he Law commands the doing the deeds not only of the brave man […] but those also of the perfectly self-mastering man, as abstinence from adultery and wantonness; and those of the meek man, as refraining from striking others […] and in like manner in respect of the other virtues and vices commanding some things and forbidding others, rightly if it is a good law, in a way somewhat inferior if it is one extemporised.[25] (Emphasis added)"

It can be argued that if a law were not conducive to any virtuous conduct but rather inclining individuals toward vice, it would not be a *Law* worthy of obedience under his thoughts.

It is true that a consequentialist approach may likewise evaluate when civil disobedience and other acts could be deemed praiseworthy. Prosch, for instance, seems to explore the issue on pragmatist utilitarian grounds.[26] However, this neither excludes that virtue ethics can serve this purpose nor ignores that consequentialist perspectives, such as a utilitarian one, could be deemed problematic in their conclusions if one examines them from a virtue or deontological perspective. This being beyond the scope of the present text, it can be the subject matter of a future analysis. It is pertinent to point out that, as Leslie Green has explained, neither prudential nor even utilitarian reasons support a purported general obligation of a moral sort to obey the law.[27]

Virtue ethics is, hence, particularly well-suited to exploring moral choices depending on the present conditions of specific circumstances. This contextualization to ascertain whether a given instance of refusing to do what the law requires or permits is virtuous or vicious can be seen as welcome and even required by virtue ethics, which pay attention to the formation of good habits that are to be practiced in the specific situations that moral agents find themselves in. Moreover, virtue ethics' insistence on practice is important for training the discernment of when it would be ethical and leading to a good life to either follow or disobey legal commands and to better refine the practical ethics skills through experience —which includes that of when law— compliance is praiseworthy, which can help to teach instances of when it is not and how to behave and ponder in either case.

1.1 Critical predispositions to follow the law versus acritical obedience

Accordingly, it is convenient to distinguish between metaphorically "blind" or non-discerning law obedience, oblivious to possible immoralities an agent

25 Ibid.
26 Cf. Harry Prosch, op. cit., pp. 186 onwards.
27 Leslie Green, op. cit., pp. 230–247.

could endorse or incur in case of compliance, and a more critically-minded *predisposition* to follow the law.[28]

Such a predisposition may even be deemed virtuous, mindful of the social goods and character formation possibilities of *responsible* compliance, that never loses sight of the fact that the law and the government are instrumental *in themselves*—e.g., in terms of human flourishing—[29]and hence prone to being evaluated in terms of the (social) goods it purportedly seeks to ensure, guarantee, or bring about. However, this predisposition to comply with the law *prima facie*,[30] unless responsibly deemed otherwise, requires even more of an agent than mere docility, i.e., it demands an assessment of the consistency with moral mandates.

This is supported by the fact that *some* decisions not to do what the positive law requires, such as acts of civil disobedience—which must be public to be regarded as such—[31]may have an expressive, symbolic, or communicative character relevant to rational democratic exchanges—even in communicative interactions of confrontation, according to interpretations of Habermas's theories.[32] This happens when they are public and send a message warning others about a given legal mandate (perceived) moral flaws.

According to Hannah Arendt, conscientious objections can, for example, "become politically significant when several consciences happen to coincide, and the conscientious objectors decide to enter the market place and make their voices heard in public."[33]

While not always performative, defiances of the sort can be even more conducive to the moral education of those witnesses of the defiance than blind obedience and, hence, even more virtuous than blind obedience. Rawls's insights shed light on this:

"[L]egitimate democratic authority may be dissented from in ways that while admittedly contrary to law nevertheless express a fidelity to law and appeal to the fundamental political principles of a democratic regime".[34]

That said, Arendt argued that:

"Civil disobedience practiced by a single individual is unlikely to have much effect. He will be regarded as an eccentric more interesting to observe than

28 Cf. G. Alex Sinha, op. cit., p. 225.
29 Cf. Ibid.
30 Cf. Ibid., pp. 227–228, 237–238, 240, 243.
31 Cf. Candice Delmas and Kimberley Brownlee, "Civil Disobedience," in The Stanford Encyclopedia of Philosophy (2021); John Rawls, *A Theory of Justice*, revised edition, Cambridge, MA, Harvard University Press, 1999, p. 337.
32 Cf. Candice Delmas and Kimberley Brownlee, op. cit.; Harry Prosch, op. cit., pp. 188–190; Piero Moraro, *Civil Disobedience and Civic Virtues* (Doctor of Philosophy Thesis), Stirling, University of Stirling, 2010, 2010, p. 117.
33 Hannah Arendt, *Crises of the Republic*, New York, Harvest, 1972, pp. 67–68.
34 John Rawls, op. cit., p. 338.

to suppress. Significant civil disobedience, therefore, will be practiced by a number of people who have a community of interest".[35]

I disagree with her, considering how even one example of defiance may inspire support and future reform. One can contest that this is a group dynamic. Admittedly so, but it can be triggered by an inspiring and originally individual stance of a member of the political group. Regardless of morality assessments, disobedience almost always has political implications and undertones related to our social nature.

Hence, unconditional law obedience is not virtuous and may even be deemed vicious, a possible extreme or deviation from the "golden means" of responsible law evaluation. Some have even argued that unconditional obedience to the law could be seen as a burdened virtue, e.g., one considered virtuous in a decontextualized sense but failing to contribute to the oppressed individuals' ability to live a flourishing life in the situation they find themselves in."[36]

It may be possible to find some situations in which complying with a given law is immoral, but in which to openly defy it by means of *publicly* demanding its reform or non-application in the events in which it is problematic is not *morally required*. Even in those cases, there can be a positive moral uptake in the individual sphere despite the lack of publicity that could lead to public discussions on law reform, such as conscience-assuaging and avoiding the perpetration of or complicity with moral injustices directly brought about or facilitated by compliance with legal demands.

Indeed, I believe the virtue of bravery or courage underscores this argument. This is so because if such virtue is the golden mean between cowardice and recklessness, moral agents may well decide not to challenge the law when doing so is excessively costly to them or those under their care in relational terms, for instance, in terms of the harm that could befall them[37] as a result of repression or the ensuing impossibility of being in a position to keep looking after someone.

That said, when the contrast between the possible repression and consequences after disobedience implies that it would be far worse to obey, there could be a moral duty not to comply. However, one could say that publicity is not necessarily required. Some have argued, for instance, that disobedience without publicity would not qualify as civil disobedience but may still have a "degree of justifiability." In contrast, in Catholic social doctrine, for instance, it has been argued that individuals are "not obligated in conscience to follow […] Unjust laws […] when they are called to cooperate in morally evil acts

35 Hannah Arendt, op. cit., p. 55.
36 Nancy Potter, *The virtue of defiance and psychiatric engagement*, Oxford, Oxford University Press, 2016, p. 37.
37 Cf. Candice Delmas and Kimberley Brownlee, op. cit.; G. Alex Sinha, op. cit., pp. 241–242.

they must refuse," but (legitimate) resistance requires not provoking "worse disorders" and having had recourse to alternative *effective* means of redress.[38]

Conversely, there may be cases in which the risks of non-obedience are low compared to what is at stake. This consideration could, perhaps, morally demand action of non-compliance, considering that omissions are a form of conduct, the consequences of which can be significant. Think, for instance, of refusing to follow legal or superior orders of perpetrating war crimes—international law indicates that following such orders is not a circumstance precluding wrongfulness.[39]

Considering both actions and omissions is relevant for determining what amounts to disobedience in terms of direct and indirect expressive impact. Thoreau's classic text on civil disobedience likewise shows how omitting the payment of taxes can send a powerful message concerning the illegitimacy of financially contributing through taxes or otherwise to wars deemed unjust.[40]

Regardless, when people engage in non-compliance despite the risks this entails, they can act virtuously if they do so for decisive and motivating moral *reasons*.[41] The motivation behind this is often multidimensional, including complex emotional and rationalized considerations that do not entail epicurean or self-interest justifications. Instead, they likely rely on moral realist considerations—whether the sources they believe in are naturalistic, conventional, or otherwise is a different matter.

Does this imply that the legitimacy of virtuous deliberate non-compliance with the law requires the observer who assesses such an action to ascribe to an objectivist moral account? Not necessarily so. Why? Because what matters is the finding that the moral agents *themselves* earnestly consider that objective moral reasons are at stake. Third parties can evaluate such a judgment from a morally agnostic point of view, being aware of the existence of competing or different conceptions of justice in plural societies, which will assist them in their evaluations (as authorities or examiners of the law-defying conduct). Altogether, they can recognize a decision as virtuous from the perspective of an objector even if they do not share the moral agent's conclusions on the existence of a given moral obligation and as part of the public debate. As Rawls himself said concerning civil disobedience:

"There can, in fact, be considerable differences in citizens' conceptions of justice provided that these conceptions lead to similar political judgments. And

38 Candice Delmas and Kimberley Brownlee, op. cit.; Pontifical Council for Justice and Peace, op. cit.

39 Cf. United Nations, *Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal*, Principle IV; Rome Statute of the International Criminal Court, article 33.

40 Cf. Henry David Thoreau, *On the Duty of Civil Disobedience*, 1849, pp. 3, 13–15, 22. Version available at: https://www.ibiblio.org/ebooks/Thoreau/Civil%20Disobedience.pdf, last visit: 17 January 2023.

41 Cf. Derek Parfitt, *On What Matters, Volume one*, Oxford, Oxford University Press, 2011, pp. 37–38.

this is possible, since different premises can yield the same conclusion. In this case there exists what we may refer to as overlapping rather than strict consensus. In general, the overlapping of professed conceptions of justice suffices for civil disobedience to be a reasonable and prudent form of political dissent".[42]

My proposal respects the agents' autonomy and acting according to what they consider ethical (conduct). This could certainly be seen from a deontologist perspective in which moral agents are deemed to act under the moral law and universalizable maxims; from a consequentialist perspective in which agents decide to choose in the ways leading to the best overall outcomes; and from an ethics of care approach in which the consideration of responsible choices flowing from relational ties is made.[43]

Nevertheless, one must acknowledge that agents can make moral choices when virtues are in tension or that hard moral choices must be made, weighing the different tension factors and circumstances involved, balancing between demands of different virtues, as a contextualized analysis that virtue ethics would demand.[44]

1.2 Expressiveness and influence of critical positions toward legal commands

Additionally, it is important to stress that non-legally-compliant conduct sends a message in itself—at the very least to those aware of it, including authorities, as appeals to conscience or else. Further consequences in terms of direct or indirect causality can be significant—for instance, preventing the victimization of those who would be harmed by the law or, at the very least, safeguarding one's conscience. Historical and literary examples could include, in my opinion, those of Thomas More's downfall due to his acting per his conscience when faced with the backlash at the hands of Henry VIII's regime and that of Antigone concerning the respectful treatment of her sibling's corpse.[45]

Some could perhaps object to the preceding considerations by indicating that events of law challenges against legal demands may generate an exponential imitation that puts society and its stability at risk, undermining the authority that can govern a society. In this regard, it is important to bear in mind possible dangers concerning potentially eroding the authority that makes (just) administration possible by State authorities as a result of instances of rebellion or disobedience, which can end up undermining social stability. Arendt

42 John Rawls, op. cit., p. 340.
43 Cf. "Introduction to an Ethics of Care," *Philosophize This!*, available at: https://www.philosophizethis.org/transcript/episode-168-transcript, last visit: 17 January 2023.
44 Cf. G. Alex Sinha, op. cit., pp. 206, 211, 228–229, 240, 242, 250.
45 Cf. Sophocles, *Antigone*, version available at: https://mthoyibi.files.wordpress.com/2011/05/antigone_2.pdf, last visit: 17 January 2023.

explored how "a disintegration of political systems precedes revolutions […] the telling symptom of disintegration is a progressive erosion of governmental authority."[46] Some even consider that this would justify harsh punishments for those challenging the law. For Hobbes, there is an offense consisting "in the renouncing of subjection; which is a relapse into the condition of warre, commonly called Rebellion; and they that so offend, suffer not as Subjects, but as Enemies. For Rebellion, is but warre renewed."[47]

Let us answer this by insisting on the contingency of the goodness of having a given regime or norm from falling into *desuetude* in light of the possibility of the virtues being trampled down. After all, both the State and legal institutions are instrumental, and their legitimacy can vanish if they cease to respect human dignity, amongst other conditions. Supporting a despotic regime's stability and status quo is not virtuous, but quite the contrary, it may be seen as vicious. Hence, compliance is not necessarily virtuous in itself but *may* be so, provided that certain values are appropriately responded to. Disobedience can be likewise instrumental or a means to an end or effect.

Other objections posit that refusals to comply are problematic considering the disregard that refusals to adhere to the law show, which, apart from making people more inclined to breach it, would be at odds with legitimate expectations of States to have their *auctoritas* and related likelihood of effectively handling governance issues intact. According to certain interpretations of Raz's arguments, disobedience could "encourage a general disrespect for the law."[48] This, the argument goes, would be contrary to citizens' commitments in exchange for the security and protection provided by the State and the honoring of the (fictitious, I might add) "social contract" and general will.[49]

However, in my opinion, these objections to law defiance are not sufficient to exclude in all cases the possible legitimacy of instances of conscious disobedience of the law in moral terms, considering how the general will may rule in ways that are contrary to morality, with majoritarian decisions not being automatically virtuous simply by the very numbers behind them. Furthermore, the social contract theory is a political fiction. As a construction, it should not be attached more importance than the human beings who are in practice actually affected by the implementation—or threat of imposition—of the law when it is problematic in moral terms—be it due to its effects, messages, or otherwise. Literary analyses help to understand the possibility and importance of empathetically placing oneself in the shoes of those whose lives are embroiled

46 Hannah Arendt, op. cit., p. 69.

47 Thomas Hobbes, *Leviathan*, 1651. Electronic version, available at: https://www.gutenberg.org/files/3207/3207-h/3207-h.htm, last visit: 7 March 2023.

48 Kimberley Brownlee, op. cit., p. 69; Christoph Horn, op. cit., pp. 229, 241–244; G. Alex Sinha, op. cit., pp. 220–222.

49 Cf. Harry Prosch, op. cit., p. 180.

in dilemmas and how it may be the case that all discourses on social contract notwithstanding, they can still bear an unjustified burden of abusive legal impositions that should not be ignored. As Nussbaum has written:

"[N]arrative imagination. This means the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person's story, and to understand the emotions and wishes and desires that someone so placed might have," with art playing an important role to cultivate it, considering how through literature one is "exposed to the experiences of people of many different types".[50]

The law, as a whole or concerning one of its components, can undoubtedly be unjust, e.g., when it is oppressive for individuals. Moreover, unconditionally favoring collectivities over those negatively affected by it could eventually reek of collectivist or even totalitarian accounts that silence human concerns and ignore individual plights. Tolstoy's novel *Resurrection* provides an example of this when exploring aspects of Russia's (then) criminal system.

Furthermore, the *possible* virtue justification of certain non-compliance events is not unconditional either. Instead, drawing from virtue ethics contextuality, it is conditioned on observing certain conditions and burdens, as I will explore next.

2. The conditionality of virtuous non-compliance with legal mandates

Deliberate non-compliance with legal demands follows the *motivating reasons* why those adopting such a course of action decide to do so.[51] Such reasons can be *good for* disobeying, either considering the potential effects that compliance and rebellion could alternatively bring about, thus paying attention to both actions and omissions or in light of the consideration of disobedience in itself as virtuous in light of its evaluation, making abstraction of legal demands. Correlatedly, instances of not complying with the law can be alternatively seen as having bad reasons when it is directly and seriously unfair.[52] Furthermore, if one accepts that the moral evaluation carried out by those agents who decided to act that way is appropriate in a given instance, one may be seen as identifying a (moral) normative reason to act that way.[53]

In general terms, one can say that there may be a variety of potential reasons, including, at the very least, the following: a legal precept a) is directly con-

50 Martha Nussbaum, *Not for Profit: Why Democracy Needs The Humanities*, Princeton, Princeton University Press, 2010, pp. 95–96, 123.
51 Cf. Derek Parfitt, op. cit., p. 37.
52 Cf. Ibid., p. 38.
53 Cf. Ibid., p. 35.

trary to what virtues demand and/or fosters (moral) vices, or can b) reasonably be seen as likely to give rise to situations contrary to what virtues demand. Therefore, virtues can compel someone to act against such a legal standard.

Examples of the first hypothesis (a) include events in which a norm is discriminatory and excludes people from what they are justly entitled to in non-legal terms. For instance, if categories of human beings belonging to certain groups are regarded as inferior or non-persons, subject to the whim and abuse of others, the norm *performs negatively*. This possibility is something that even the case law of regional bodies of the Inter-American system of human rights has acknowledged in terms of the protection of the right to the recognition of legal personality, there being regretfully historical examples of breaches against this human right, as that of the Nuremberg laws.[54]

The second hypothesis (b) can refer to cases in which the implementation of an interpretation[55] of a legal norm leads to a vicious result or in which a legal standard is always conducive to vice, and its application would thus always be contrary to morality. As examples, one can think of a case in which a construction of a norm permitted agents to engage in torture, described domestically as lawful, or of genocidal acts required of State agents—e.g., the military. In these cases, agents would have a moral imperative to refuse to follow the legal mandates or permissions, considering how contrary they are to charity, solidarity, and other virtues.

In this regard, adding the notion of co-dependent actions under a "correspondence thesis," proposed by Heidi Hurd about disobedience, is pertinent. According to it, to evaluate the morality of a given action, one cannot lose sight of whether such action ends up endorsing an immorality that will (probably) follow from another action and was made possible by the one that was evaluated.[56] For instance, in the event of a legal interpretation or norm that says that what happens in the private sphere is not of the concern of authorities, police officers who simply act out based on a supposed virtue of obedience to superior orders will actually be acting immorally if they decide to heed that legal element in order to not investigate and take action if domestic violence has taken place in a given case. Different virtues can be at stake, and the multiplicity of the interrelated conduct must be considered by moral agents.

As indicated above, virtue ethics analyses are often conducted on a context-sensitive basis that considers the multiple virtues involved on a case-by-case basis. If coherence with those that end up being considered weightier[57] would

54 Cf. Inter-American Court of Human Rights, *Suárez Rosero Vs. Ecuador*, Judgment (Merits), 12 November 1997, para. 98; Michael Berenbaum, "Nürnberg Laws," in: *Britannica*, available at: https://www.britannica.com/topic/Nurnberg-Laws, last visit: 7 March 2023.

55 Cf. Kimberley Brownlee, op. cit., pp. 90–91; G. Alex Sinha, op. cit., pp. 217, 238, 242, 250.

56 Cf. Heidi M. Hurd, "The Morality of Judicial Disobedience," in *Penn Law Journal*, XXIX (1993), pp. 22–23.

57 Cf. G. Alex Sinha, op. cit., pp. 240, 242, 250.

be hindered by legally compliant conduct, it can be deemed vicious. Other pertinent considerations include the analysis of the effects that compliant or defiant conduct produces on the betterment and well-being of third parties.

Accordingly, this balancing analysis, pertinent in virtue ethics, must be a part of every assessment of whether engaging in a deliberate refusal to comply with the law could be considered virtuous or vicious. In this section, I will examine some non-exhaustive candidates for elements that, when applicable and pertinent—provided that the conditions exist in a given case—can and probably should be considered in this evaluation.

The contextuality of virtue analyses implies that each of them, after an overall analysis of the different ethical factors, may tilt the balance in favor of refraining from or engaging in disobedience, which is why they must all be examined in conjunction in order to better illuminate the decision-making process. Nevertheless, this global analysis of all elements could well lead to considering that there are no *sufficient* reasons to disobey relatively minor unjust norms even when doing so is morally problematic for other factors in a non-sufficiently intensive way, i.e., insofar as it could end up being outweighed by or weaker than what other (moral) reasons suggest.[58] Unless stringent conditions are present, Aquinas' call for restraint and obedience[59] expresses the idea of considering the gravity of the immorality brought about by the law or its implementation.

In my opinion, factors to ponder when assessing the virtuousness or viciousness of acts of disobedience of legal mandates include, possibly among other elements, the following two: a) no harm or no unfair negative impact that may be probably caused due to action or omission considerations; and b) discerning due diligence regarding the stakes and potential backlash and subsidiarity in terms of the absence of effective alternatives to avoid an injustice caused by the law, considering how in the end civil disobedience is rooted on the perception of alleged injustices.[60]

Altogether, legal injustice is not the only and exclusive consideration determining whether a refusal to comply with a legal mandate to act or refrain from acting is virtuous or vicious.

2.1 Harm considerations in deliberations on law compliance

Concerning (a) no harm or no unfair negative impact, the agents need to deliberate if their choice to either refuse to comply with the law or act in accordance

58 Cf. Derek Parfitt, op. cit., p. 33.
59 Cf. G. Alex Sinha, op. cit., pp. 223–224.
60 Cf. John Rawls, op. cit., p. 337.

with it, out of reasons guided by virtue considerations that are decisively supporting (or leading to, in the case of motivating reasons) the respective course of action, would threaten harm or considerable adverse effects caused to others entitled to protection.

The likelihood of such harm, their seriousness and comparison to what is defended, the identity of those who could be affected, and other considerations are pertinent. Some, for example, have argued that it is much more challenging to justify incidental harm caused to private property than to public one with direct or symbolic connections to what is seen as abhorrent and triggering acts of disobedience of the law.[61]

Therefore, one can think of how protests against curfews or mobility norms leading individuals to occupy public spaces could lead to tolerable or excessive difficulties for others. If blockages are such that they impede the mobilization of rescue services such as ambulances in an emergency, there being no effective alternatives for providing them when needed,[62] for instance, one could think that such acts are pretty likely to endanger third parties who should not have the burden of being exposed to this risk.

Moreover, when lives or possibilities of dignified living conditions of third parties are at stake, they should have a much higher priority, as a theory of value could indicate in terms of considering "what kinds of actions and attitudes are called for" in terms of "how to value" something and "*how great* that value is."[63]

Therefore, in my opinion, the inherent value of other human beings, the respect of which is called upon by virtues of respect, justice, and solidarity, and the dependence of the enjoyment of other rights on life being ensured, imply that greater priority is attached to life. Taking into account these considerations, Dietrich Von Hildebrand has said that some "virtues derive from a value-responsive central attitude; they all presuppose awareness of value, and the readiness to surrender to value and to submit to its demands."[64]

Admittedly, social life is so interconnected that acts of deliberate disobedience to the law almost inevitably will trigger ensuing events that will likely directly or indirectly affect others, disturbing them or worse. Therefore, not every kind

61 Cf. Candice Delmas and Kimberley Brownlee, op. cit.; G. Alex Sinha, op. cit., p. 246.

62 Cf. Inter-American Commission on Human Rights, *Observaciones y recomendaciones de la visita de trabajo de la CIDH a Colombia realizada del 8 al 10 de junio de 2021*, 2021, para. 160; Inter-American Commission on Human Rights, Press Release No. 137/21 ("la Comisión condena categóricamente que en el contexto de las protestas se hayan presentado decenas de ataques a ambulancias y misiones médicas, dificultando el traslado de pacientes. En particular, la CIDH deplora el fallecimiento de una bebé intubada como consecuencia de que no pudo ser trasladada oportunamente)".

63 T. M. Scanlon, *What We Owe to Each Other*, Cambridge, MA, Harvard University Press, 1998, p. 99.

64 Dietrich Von Hıldebrand, *Humility: Wellspring of Virtue*, Nashua, Sophia Institute Press, 1997.

of perturbance is such that it prevents disobedience from being morally correct. Otherwise, the morality of disobedience of the law could never be possible. But moral agents still have to consider whether their conduct will bring about exceedingly unfair effects on others, even if these do not threaten their lives or outwardly harm them in a specified way.

In this regard, paying attention to mutual interrelations and co-dependence, Moraro has said that nonviolent conduct of disobedience can still be "unfair to other people," rendering it morally wrong or problematic, while Prosch does well to remind that agents who engage in disobedience of the law must recall that their interests "are not the only ones in existence."[65]

I would say that one has to compare the legal injustice with the dangers that third parties should not be exposed to *prima* facie to analyze if what disobedience brings about could amount to a tolerable disruption under the contextualized analysis that virtue ethics can provoke—considering how others may benefit or be willing to tolerate serious injustices and how they could be harmed from reactions to and ripple effects of challenges against the law. This requires considering relation-sensitive analyses such as that of co-dependent actions.[66]

Therefore, factors including the seriousness of the injustice—which Rawls wrote about as an important element that could legitimize civil disobedience as a relevant social "device"—[67]that acting in accordance with the law would tolerate or bring about; the reasonableness of the burden(s) that others should or do not have to carry; and the specific kind of impact that could be caused and their probability or possibility; are to be analyzed in conjunction as well to determine whether there are reasons that could end up either outweighing disobedience or making disobedience a weaker reason, thus not to be followed lest it is regarded as vicious instead of a virtuous exercise of free agents.

To my mind, this is quite an important caveat concerning the importance Aristotle gave to the notion of free individuals (citizens),[68] considering how the freedom to make choices entails the possibility of doing so wrongly in moral terms. Furthermore, Aristotle also (correctly) believed that "humans are morally weak and therefore inclined to all sorts of irrational behavior and dominated by irrational affections; hence they need an intense moral and cognitive education."[69] This must always be acknowledged when pondering whether and how to disobey the law for moral reasons, considering how these inclinations may cloud our judgment. In his ethical studies, Kant likewise consid-

65 Piero Moraro, op. cit., p. 150; Harry Prosch, op. cit., p. 189.
66 Cf. Heidi M. Hurd, op. cit.
67 Cf. John Rawls, op. cit., p. 336; G. Alex Sinha, op. cit., p. 243; Candice Delmas and Kimberley Brownlee, op. cit
68 Cf. Christoph Horn, op. cit., pp. 224, 228, 234, 238, 241.
69 Ibid., p. 235.

ered human concupiscentia or the "propensity" or "tendency to care for the inclinations" of an irrational sort.[70]

Indeed, in my opinion, our inclinations, for instance, unreasonable impassioned instances of an exaggerated disproportionate reaction to legal norms that are morally problematic in minor terms in their content or application, must, therefore, be reined in. This is not to say that emotional reactions against the law are inadequate because they may be well justified and serve in motivational terms in specific cases. Furthermore, when public(ized), the expressive dimension of disobedience is more effective when emotions are transmitted because of how inspirational it can be. It can sometimes have an "artistic" dimension if one borrows Tolstoy's ideas about what art is.[71]

Morally relevant disobedience encompasses all possible conduct, including actions or omissions. Actively and openly doing something forbidden by the law would be an example of the former, and *refusing* to do what a law commands after a serious moral examination would be one of the latter. This is so because it may be that refusing to do what one is legally required could put someone else at risk when they expect or need one to act in a certain way.

Such is the case, for instance, of some criminal norms requiring assisting others in mortal danger under certain circumstances.[72] After all, both actions and omissions are forms of conduct, and the latter can certainly be morally problematic. Peter Singer explored this in his famous text on famine, affluence, and morality, arguing that even if one excuses oneself psychologically because others could have acted, one may still be under "moral obligations."[73]

Admittedly, the notion of not causing negative impacts that are unfair toward others, a non-exclusive subspecies of which can be framed in terms of considerable[74] harm against the enjoyment and exercise of entitlements based on human dignity[75] or against legitimately protected interests, such as environmental ones, that I propose here is *broader* than that of nonviolence. All harm must be considered and weighed by a moral agent for their judgment to be appropriate. According to Rawls and others, it constitutes one of the indispensable conditions for acts to be considered manifestations of civil disobe-

70 Owen Ware, "Kant on Moral Sensibility and Moral Motivation," in *Journal of the History of Philosophy*, 52 (2014), p. 735.

71 Cf. Leon Tolstoy, *What is Art?* 1904 (translation by Aylmer Maude), p. 48 ("it is on this capacity of man to receive another man's expression of feeling, and experience those feelings himself, that the activity of art is based).

72 Cf. John T. Pardun, "Good Samaritan Laws: A Global Perspective," in Loyola of Los Angeles International and Comparative Law Review, 20 (1998), pp. 591–603, 606, 609–611.

73 Peter Singer, "Famine, Affluence, and Morality," *Philosophy & Public Affairs*, Vol. 1, 1972, pp. 232–233.

74 Cf. G. Alex Sinha, op. cit., pp. 245–246 (on "the implications of one's methods for the interests of other people").

75 Cf. Cf. Oliver Sensen, "Human dignity in historical perspective: The contemporary and traditional paradigms," in *European Journal of Political Theory*, 10 (2011); Vienna Declaration and Programme of Action, 1993, Preamble.

dience—which is, in turn, the subject matter of debate as to which kinds of actions engage in violence and whether action directed against objects could sometimes nonetheless be seen as forms of civil disobedience.[76]

In addition, both moral and prudential reasons, which are not impertinent when discussing disobedience, suggest that sometimes engaging in deliberate disobedience of the law is not prudent or wise and also that when one engages in disobedience, its functional participatory character requires one to think of *how* to disobey—a question that entails both prudential and moral considerations.[77]

2.2 The formation of a diligent conscience when assessing law compliance dilemmas

The preceding explains why I propose a notion of (b) due diligence that moral actors must conduct before *and* after deciding whether to engage in a refusal to obey the law(s). This entails a burden for whosoever intends to engage in a deliberate refusal to comply with the law to conscientiously, requiring that the individual considers two elements before engaging in such an act: first, whether there are effective and reasonable alternatives that could be resorted to instead in order to avoid an injustice brought about by the law that is commensurate with the gravity of the situation; and secondly if there would be excessively problematic effects that could likely be generated by the disobedience in question that make it advisable to refrain from engaging in it when compared to the aforementioned alternatives if they exist; or in comparison to the injustice brought about by the law and the legitimacy of the affected interests if none exists. Implicitly, said requirements entail a duty to seek to obtain accurate and relevant information to the extent possible. In my opinion, the previous considerations are supported by arguments that whether moral agents might have a duty to obey legal "commands depends upon the subjective conditions of the respective agents, such as the information (or misinformation) that each has."[78]

One can argue that disobedience should not be resorted to if one finds alternatives that could be used instead to avoid the injustices of a given legal provision. In this regard, Prosch has conditioned the legitimacy of civil disobedience to only those "social situations in which it is needed." In my opinion, this implies that if institutional venues could permit to find redress, they should be preferred. Others have posited that resistance to government decrees requires exhausting alternative "means of redress" with chances of

76 Cf. John Rawls, op. cit., p. 337; Candice Delmas and Kimberley Brownlee, op. cit.; G. Alex Sinha, op. cit., p. 246.
77 Cf. G. Alex Sinha, op. cit., pp. 241, 245, 249; Harry Prosch, op. cit., p. 189.
78 Patrick Durning, op. cit., p. 377.

effectiveness in ending sustained serious injustice, which implies a burden of looking for them.[79]

Hence, if legal remedies allow challenging injustices within the system, that would be preferable.[80] Apart from legal remedies, I think that other social strategies must likewise be considered. Amartya Sen, for instance, has written about how education-inclusive and other initiatives could sometimes have a more significant positive social impact than mere legal change.[81]

I agree to a large extent with this consideration on alternatives' examination, with a caveat: that of the reasonable prospects of effectiveness. This is an additional consideration that, in my opinion, should be added to the content of the due diligence required of those examining the issue. Its content would explore whether the alternatives to disobedience have a real potential likelihood of remedying or preventing injustice. Otherwise, they should not be seen as valid alternatives. This is a criterion ("reasonable prospects of success") that, in my opinion, philosophical inquiries could borrow from international human rights case law.[82] Additionally, it takes into account how bureaucratic realities in social life can make the prospects of actual change to remedy perceived injustices a mere mirage of democratic participation.[83]

This criterion could include, for instance, time elements, such as the reasonableness of the time in which an issue will likely be resolved. According to it, if there is a pressing matter in ethical terms, alternative remedies could potentially serve to remove or alleviate the injustice but only too far in the future, in light of the threat posed by the law, with the harm being perhaps irremediable, waiting for the outcome of official remedies could be seen as excessive, and disobedience could be morally acceptable. These considerations examined in conjunction lead to a robust residuality or, better yet, to a subsidiarity analysis, for which socialization is essential for flourishing, something dear to virtue ethics and encourages individual participation.[84]

To my mind, subsidiarity is relevant for the present discussion regarding who should be given priority to address an issue and in terms of examining if alternatives must be exhausted before disobeying, as described and proposed here. Furthermore, its content indicates that it is part of the conscientious way decisions must be made before disagreeing. This is not only conscience-forming

79 Harry Prosch, op. cit., p. 190; Pontifical Council for Justice and Peace, para. 401.
80 Cf. Ibid.
81 Cf. Amartya Sen, "Elements of a Theory of Human Rights," in *Philosophy & Public Affairs*, 32 (2004), 344–345.
82 Cf. European Court of Human Rights, *Practical Guide on Admissibility Criteria*, 31 August 2002 updated version, paras. 95, 100, 104, 118.
83 Cf. Harry Prosch, op. cit., p. 187.
84 Cf. Paolo G. Carozza, "Subsidiarity as a Structural Principle of International Human Rights Law," in *American Journal of International Law*, 97 (2003), pp. 40–43; Pontifical Council for Justice and Peace, op. cit., paras. 185–191.

but also part of the burden of foreseeing the possible consequences and the justice of the planned action before proceeding to act, bearing in mind the moral implications of one's planned action of resistance.

In my opinion, this follows from considerations as that of Lewis, according to which moral agents must do "the best" they can in their circumstances without ignoring "the relevance of the decision of other people to [their] own decision," the methods that the law provides, and their effort and mature judgment, all of which is relevant for the due diligence purposes I suggest.[85] Moreover, the *instrumentality* of disobedience[86] implies that it is not absolute and that pursued objectives must be considered in terms of all possible other *means* to achieve them without ignoring attainable competing goals—of oneself or other moral agents.

As I indicated above, such a burden must also examine all the implications and potential side effects of one's action, apart from harm, as a different criterion. For instance, some authors have suggested that excessive enraged backlash against the conduct of disobedience could be so inimical to the motivation behind it or lead to such consequences as to potentially make it unadvisable, not prudent, or even morally problematic—for example, if ill will generated against objectors ends up harming the objective.[87]

Considerations of the social harm of the example set by the disobedient conduct and the possibility of weakening the habits of law-abidance by others and eroding the authority of those politically governing a community, which Aristotle and others worried about,[88] is, therefore, something that should be explored following these considerations. However, I have been defending the necessity of examining all relevant factors. Hence, this is not the only thing to consider. One must also ponder the gravity of the injustice itself, considering how compliance in terms of "blind" or non-discerning obedience to the law should not be seen as virtuous, as others have, in my opinion, well and persuasively argued.[89]

I will now proceed to examine jus naturalist and phenomenological considerations that can illuminate, on the one hand, why some people attach greater priority to non-legal normativities in certain instances in light of their roles and experiences and, on the other hand, whether reliance on natural law considerations by those resorting to disobeying the law out of moral criteria on their basis threatens the very notion of autonomous positive law (in terms of its independence from other normativities). This is so because a better understanding of these phenomena can shed light on strategies that can increase the

85 Cf. H. D. Lewis, "Obedience to Conscience," in *Mind*, 54 (1945), pp. 229, 244, 247–248.
86 Cf. Harry Prosch, op. cit., p. 190.
87 Cf. G. Alex Sinha, op. cit., p. 245; Harry Prosch, op. cit., pp. 188–190.
88 Cf. Christoph Horn, op. cit., pp. 226, 232–233, 235; G. Alex Sinha, op. cit., p. 220.
89 Cf. Nancy Potter, op. cit., p. 37; G. Alex Sinha, op. cit., p. 225.

legitimacy of legal institutions via improving both their content and the procedures related to implementation, creation, and decision-making processes of a variety of interactions with the law, considering how the legitimacy of legal institutions is both substantive and procedural, as studies as those of Thomas Franck have suggested.[90]

3. The possibility of critically evaluating positive law without denying its autonomy and existence

A question that some may find problematic concerning the possibility that non-legal normativities may end up posing virtuous (or otherwise ethical) challenges to demands of positive law is whether this is at odds with the autonomy of positive law or would make it subservient to compliance with non-legal standards. In this section, I will argue why this is not the case.

Firstly, as can be gleaned from the ideas of Rawls,[91] one may well politically consider that a given legal demand—or even a system in general—is contrary to tenets of justice without denying its legality. Furthermore, it may even be the case that such challenges lead to public discussion that is healthy in democratic and pluralist terms, enriching the non-strict forms of consensus and leading to dialogues, the reason why they are not necessarily illegitimate. These arguments can be confirmed by the case study of natural law ideas. That said, it is important to bear in mind that alternative critical approaches can likewise permit justifying non-compliance deemed virtuous without denying the autonomy of validity of the law *qua* law. In other words, compliance challenges do not necessarily entail validity challenges. As a result, these discussions operate on the level of normativities (moral or otherwise) that are not legal and their underlying implications.

Whether the law should take them into account somehow is another question. In my opinion, it may do well to modulate or even exempt certain consequences when responding to breaches, as may happen when domestic orders are unheeded to avoid participating in international crimes. For example, international law is a legal system different from domestic legal ones. Thus, the international criminalization of a given conduct does not necessarily entail that it is prohibited domestically, and moral agents can bear this in mind. Likewise, refusing to obey legal mandates in order to refrain from participating in any way (not necessarily as perpetrator) in heinous conduct not (clearly or at all) regarded as criminal in international or domestic law at a given moment—which is a contingency that may be the result of political issues pertaining the collective formation through the sources of that law—

90 Cf. Thomas F. Franck, *Fairness in International Law and Institutions*, Oxford University Press, 2002, pp. 7–8.
91 See footnotes 24 and 28, *supra*.

nevertheless can be based on legitimate reasons, reason why different regimes and their authorities ought to consider moral assessments and evaluations in order to determine if and how to respond to such challenges. Sufficient room can lead to discussions about improvements of defective laws in democratic (and other) systems. Altogether, authorities ought to take into account motivations of serious moral aspects of the sort being described.

3.1 The example of natural legal considerations as grounds for refusing to follow legal commands

Some could see legal positivist and naturalist accounts as antagonistic, especially if they considered that each of those portrayals has assumptions seemingly incompatible with those of the other in terms of their responses to the question of "what is law?" Answers to that question depend on identifying where legal manifestations come from: Does it come from what authorities determine under a legal system, regardless of whether their decisions are consistent with extra-legal considerations of a moral, metaphysical, or other nature? Or instead, only what is compatible with standards of the latter kind count as "true" law? Based on this, one could wonder about cases of intentional disobedience of the law prompted by natural legal considerations. Is it really a case of disregarding legal commands? Is it not instead a case of *actually* following the *law*, the validity of which would depend on consistency with natural law for some?

I believe such a conflict of mutual exclusion between positivist and extra-legal critical standards is neither unavoidable nor accurate. To my mind, the dilemma is a false one. Indeed, if disobedience is motivated by another normativity, there would clearly be a breach of the law, motivated by reasons under a *different* normativity. This is so because positivism and naturalism are responses to *concerns* of a *different* sort. Positivistic stances neither deny nor exclude the possibility of evaluating positive law on the basis of extra-legal considerations, which in turn do not deny the *legal* existence or nature of the objects of their critique.

This in no way entails a denial that *both* positive law and natural law conceptions may resort to fiction—which nevertheless *might* have useful functions in political and sociological terms: Positive law could be questioned from a constructivist, sociological, or psychological perspective that challenges how interactions with the law take place, sometimes concealing or revealing agendas that are promoted by operators and actors that interact with it. This may be seen as rebutting the alleged objectivity and neutrality underlying orthodox positive and liberal legal conceptions.[92] Such assessments—which are extra-legal,

92 Cf. Andrea Bianchi, *International Law Theories*, Oxford University Press, 2016, pp. 21, 24, 27–29, 37, 41, 86.

for instance, based on meta-ethical foundations, amongst other possibilities—may well provide reasons for civil disobedience or other challenges against legal commands.

Altogether, natural law-type considerations, provided that they do not confuse extra-legal criticism with legal nature questioning, can help to highlight both how the law is instrumental and can have praiseworthy or problematic effects and implications when seen through different lenses. Legal practitioners and lawmakers ought to be aware of this since legitimacy or the lack thereof may decrease or increase the likelihood of disobedience of the law. In this respect, Kelsen himself acknowledged that effectiveness does not determine whether something is law, mainly because of the Kantian distinction between "is" and "ought."[93] Hence, civil disobedience and other forms of virtuous non-compliance do not entail a refusal of the existence of an autonomous and valid positive law.

Furthermore, while the concerns of legal positivism when it comes to jus naturalist positions are manifold, in this analysis, I would like to focus on the following: (alleged) mutual exclusion concerning the identification of the law and the diversity of views on how to evaluate the law from an extra-positivist perspective.

Regarding the first issue, it is certainly possible to question whether natural law and positivism are truly at odds and mutually exclusive. Some have even ventured to say that, in the end, both attempt to explore what counts as "legal and illegal," paving the way for immense conflict between them.[94] Thad said a theory according to which the validity or the existence of law depends on observing some meta- or extra-legal criteria would certainly be incompatible with positivism insofar as it would be contrary to the autonomy of the legal discipline in terms of the definition of what law *is*.

However, it is convenient to consider that natural law and other critical views from the standpoint of other bases (TWAIL, Marxist, etc.) do not need to directly condition the existence of valid law as such on extra-legal grounds. In other words, they are not meant to assess if positive law "is" law. Instead, they are concerned with other elements, such as their *legitimacy, acceptability* in terms of the worthiness of compliance (in rational or other terms), *moral* obligations, and practical reasons, among others. This actually *presupposes* that there is law as such! As John Finnis has explained, whether unjust laws are laws is not a primary or essential concern of natural law theories. *Some* mis-

93 Cf. Ibid., p. 40.

94 Cf. Yashim Butende, "The Believe of Human – The Naturalist versus the Positivist," available at <https://www.academia.edu/13447719/THE_BELIEVE_OF_HUMAN_THE_NATURALIST_VERSES_THE_POSITIVIST?auto=download> (last checked: 05/01/2022), p. 8.

understandings about this might have been created by misconceptions held by some positivists.[95]

Certainly, the views on these notions can stimulate challenges to observing positive law and, thus, its effectiveness via civil disobedience or other initiatives. Still, they do not necessarily defy or question its *ontology* as such. Even classical texts on which naturalists have found inspiration, such as Sophocles's Antigone, in the end, acknowledge that there is a human-made law, with the caveat that it may be seen as unjust from extra-positivist considerations—which in turn can be disputed, it is important to recall.

Concerning these issues, from the perspective of the instrumentality and the impact of law on human and non-human realities (e.g., environmental), one cannot ignore that certain (positive) laws might be problematic and deserve a critical examination. Such critical assessments do not entail a blurring or merging of positive and non-positive normative spheres. Instead, it can *preserve* the distinction between *lex lata* and *lex ferenda*, i.e., between the positive law that exists and that which, according to some criteria, should exist.

A constant evaluation is especially called for, given the dynamism of the law and how it can be modified (or interpreted differently) over time by succeeding authorities. In comparison, it is true that some stress how the law should provide stability and predictability[96]; one cannot ignore how its stagnation would prevent it from keeping up with changing social realities. Moreover, changes in the ideology of those in power may lead them to adjust the law to new views. Alternatively, they may fail to do so. Hence, given its mutability, the fact that the laws under a given system are not perceived as problematic one day implies no guarantee that they will still not be so.

Furthermore, some natural law—and other critical—accounts do not necessarily seek to provide a basis for the law's *existence or validity* but always offer pertinent criteria concerning its *evaluation* from a certain angle.[97] For instance, one can interpret that Aquinas's appeal to the need that he considers there exists for "human" laws to "proceed" via speculative operations from natural precepts is one of *ought* rather than what *is*.[98]

This possibility is especially appealing when seen in the light of his analysis of the phenomenon of rebellion, conceding that there may be problematic rulers branded even as tyrants insofar as they do not seek the common good through

95 Cf. John Finnis, op. cit., pp. 28–29, 351.

96 Cf. Stefanie A. Lindquist and Franck C. Cross, "Stability, Predictability and the Rule of Law: *Stare Decisis* as a Reciprocity Norm," available at <https://law.utexas.edu/conferences/measuring/The%20Papers/Rule%20of%20Law%20Conference.crosslindquist.pdf> (last checked: 05/01/2022), p. 1.

97 Cf. Yashim Butende, op. cit., p. 8.

98 Cf. Thomas Aquinas, *Summa Theologica*, heading "Whether there is a human law?"

their power. He even considers that they may be deposed legitimately when excessively unjust in their rule.[99] This implicitly entails a challenge to the legal system they support and use. Likewise, it is important to consider Finnis's argument that natural law theories are not necessarily concerned with legality questions but can instead be predicated on practical reasons, including those found via virtue ethics analyses, and how they might illuminate the "moral" rather than "legal" obligations (or lack thereof) to follow a ruler's given commands. It underscores and reveals that there is not necessarily confusion or a merging between positive and natural law considerations by the latter.[100]

There can be skepticism toward natural law narratives from postmodern, agnostic, relativistic, or social pluralist positions that acknowledge the existence of varied and even competing narratives about what justice is and the difficulty of agreeing on which one, if any, is correct or upheld by the political community. This may be because of disagreements or doubts concerning their metaphysical or religious justifications or identifying a valid account from a purely rationalistic point of view.[101]

Refraining from endorsing any of the opposed conceptions about justice or (non-biological) "nature" ideas, positive law, enacted by authorities and identified by their validity conditioned to consistency with a *Grundnorm* or identification via a rule of recognition (in the Hartian version), is precisely well-suited to a plural society (as all societies are, in my opinion). Hans Kelsen was correct about this when he stressed the notion of tolerance.[102] Furthermore, positive law positions permit the identification of legal rules, principles, and standards regardless of extra-legal disagreements with their content or creation.

3.2. Rule of law and the intrinsic and extrinsic critical evaluations of the law and its commands

However, two unsolved problems remain. Firstly, individuals or groups within societies can still *challenge* positive law(s) from an extra-legal point of view via civil disobedience or otherwise—based on natural law or other accounts of legitimacy (such challenges could inspire improvements to problematic legal standards). After all, given their autonomy, the fact that something counts as legal does not prejudge or determine its consistency with non-legal normativities.

Secondly, correspondence (or lack thereof) of positive law with legitimacy considerations can either increase or decrease the likelihood of its effectiveness.

99 Cf. N. P. Swarts, op. cit., pp. 152–153.
100 Cf. John Finnis, op. cit., pp. 351, 360.
101 Cf. Hans Kelsen, *What is Justice? Justice, Law, and Politics in the Mirror of Science, Collected Essays*, Berkeley, University of California Press, 1971, pp. 22–24.
102 Cf. Ibid.

Even if, as Kelsen argued, *legal validity* is not confused with effectiveness, considering that unless it is *never* observed, a norm or legal system is still such.[103] From a sociological point of view, those authorities or actors with stakes in the law and benefiting from it are presumably interested in the effectiveness of the law of the legal system they operate in, not only in their formal legality. Aquinas said that "every law aims at being obeyed by those who are subject to it."[104]

Additionally, while *theoretically*, the law exists objectively and independently of extra-positive law considerations, a door is opened up both by *interpretation* and interactions with the law in ways that—consciously or not—further agendas and are shaped by political, phenomenological—explored in Section 4 *infra*—, and legal assumptions that interpreters (even unofficial ones who invoke the law in non-official fora) and authorities come up with. This will likely lead to differing *conclusions* about the *content* of the "objective" or "pure" law and its *evaluation*. Ultimately, this may engender suspicions about the *belief* that the law is one and objectively identifiable, autonomous, and independent from politics and other spheres (not to mention confusions in the case of theocracies and different regimes, which can yet be defined as positive in nature). Thus, as a possible reaction against alleged *fiction*, positivism can be in practice none other than one other fiction under the pretense of airtight impermeability. This in no way denies that political and legal fictions and constructs can serve social and other functions due to their expressive or other effects. I will now turn to explore this.

Some positivists have posited that the law can serve to achieve different objectives, ranging from managing (social) conflict to (social) planning (e.g., Shapiro's version).[105] In my opinion, those are *some of the possible* effects pursued by what can be encompassed by the notion of legal *participants*, as employed by Rosalyn Higgins.[106] After all, those who interact with the law to create, interpret, modify, implement, invoke it, or otherwise in formal and informal settings may pursue different agendas or policies.[107] Indeed, given how widely different participants are and what they seek via their interactions with the instrumental social construct that positive law is, consciously or not, it may seem too narrow to consider that the law only or mainly serves this or that social objective.

Rather, and considering how many or some goals may be sought by certain participants, from a socio-political point of view, it could be more interesting

103 Cf. Hans Kelsen, *Teoría Pura del Derecho*, Mexico City, Universidad Nacional Autónoma de México, 1982, pp. 219–225.

104 Thomas Aquinas, *Summa Theologica*, section "Of the effects of law" (two articles).

105 Cf. Scott J. Shapiro, *Legality*, Cambridge, MA, Harvard University Press, 2011, p. 195.

106 Cf. Rosalyn Higgins, *Problems & Process: International Law and How We Use It*, Oxford, Oxford University Press, 2004, pp. 48–55.

107 Cf. Myres McDougal and Harold D. Lasswell, "The Identification and Appraisal of Diverse Systems of Public Order," *American Journal of International Law*, Vol. 53, 1959.

to explore what effects positive law can have in terms of the *contemporary* rule of law demands and considerations, e.g., *can* it serve to enhance the protection of individuals and minorities? Can it pave the way for the political accountability of authorities?

In my opinion, the answer is an affirmative one, not in an unconditioned but in a contingent way: It *may* contribute to achieving those aims if interpreted in a way that fails to equate the rule of law with a mere identification of the existence of law as produced by the proper authorities with the power to do so *under a given system*—which is problematic or insufficient when examined in-depth. Such a system and its logic and sources are constructed socially and thus contingent, and other more convenient or praiseworthy alternatives could exist.

One must recall how some theoretical constructions, such as that of the *Rechtsstaat* about protection from executive branch overreach, are still overtly formal and focused on the state, thus not synonymous with the contemporary notion of the rule of law, as pointed out by the Venice Commission.[108] The more legitimate a law is, the less likely (but not necessarily impossible) that the conditions for intentionally disregarding its mandates suggested in Section 2 will be satisfied.

In this regard, I argue that rule of law considerations are not merely about the *observance* of (any) positive law but instead demand a *qualified* law, i.e., that one meets specific demands and conditions. Otherwise, mere implementation of the law by a despotic regime could be seen as meeting the condition of the rule *by* law. In today's rule of law conception(s), the *law* is thus not a mere positivistic but a *critical and political* concept.

Let us look at this with one example: Publicness requirements demand that the law be *known* and decisions according to it justified and explained so that challenges to them can have some guarantees and safeguards.[109] This is something that international human rights law requires as well.[110] Other formulas, as those proposed by Fuller in terms of eight conditions or "principles of legality," or Radbruch, likewise point to requirements that a legal system or institution should satisfy to be either considered as consistent with the rule of law or as not merely valid but also worthy of being heeded by moral agents.[111]

108 Cf. European Commission for Democracy through Law, *Draft Report on the Rule of Law*, Study No. 512/2009, CDL (2010)141, 9 December 2010, paras. 14–15.

109 Cf. Benedict Kingsbury, "The Concept of 'Law' in Global Administrative Law," in *European Journal of International Law*, 20 (2009), pp. 31–52.

110 Cf. European Court of Human Rights, Grand Chamber, *Case of Kononov v. Latvia*, Judgment, 17 May 2010, paras. 185, 235–236, 241.

111 Cf. Jacob T. Levy, "Lon Fuller, The Morality of Law," *Oxford Handbooks Online*, 2015, available at: https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/1/627/files/2017/02/2015.-Lon-Fuller-The-Morality-of-Law-2k5gb7c.pdf, last visit: 7 March 2023; Jeremy Waldron, "The Rule of Law," *Stanford Encyclopedia of Philosophy*, 2016, available at: https://plato.stanford.edu/entries/rule-of-law/#ValuUndeRuleLaw, last visit: 7 March 2023;

Politically and meta- or extra-legally, this is justified as a protection against possible abuses of authorities. For instance, comparative law analyses have shown that despotic regimes could use secrecy, ambiguity, or lack of clarity in the law to uphold their whims.[112] It could be the case that an absolutist and authoritarian system identifies the will of a ruler with the law according to its systemic identification criteria.

Nevertheless, since positive law could be said to exist even in such an event, why can it be said that the fiction of its objectiveness is still helpful and actually (counterintuitively, for those holding antagonistic paradigms of positive vis-à-vis natural law) *open to and inviting* extra-positivistic assessments?

One could argue that the autonomy of positive law under its logic does not exclude but concedes that extra-legal normativities may evaluate it on their terms. On the one hand, the (positive) laws of other States and entities could provide both inspiration and criticism in highlighting the shortcomings of those of a given system. On the other hand, the law's autonomy implies that it must likewise acknowledge the autonomy of other (non-legal) standards, under which the law, whose positivity is not questioned, may be deemed problematic under their terms.

Altogether, evaluations of the law could be either intrinsic or extrinsic assessments, depending on whether a critique is based on alleged improper positive technical legal operations—e.g., alleged inadequate interpretations, incompatibility of a lower-ranking norm with the Constitution—or on its conflicting with extra-positive law criteria.

As to the former, intrinsic criticisms can suggest that a given outcome is not necessarily legally correct despite its emanation of an act of authority. This possibility rests on technical arguments that posit that sources of the law or other required positive legal elements were missing.

Being this so, positive law invites and urges authorities to be aware of alternative interpretations relying on positive considerations and forces them to explain and justify their selections instead of other interpretation possibilities, defending their decisions as being based on the *law* (that should be known by its addressees), and not on different criteria that cannot be invoked or handled by stakeholders.

Additionally, the fact that positive law is deemed a socio-political reality different from moral, social, ethical, religious, or other normativities different from the legal one—the existence of which Kelsen himself recognized—[113]implies

Brian H. Bix, "Radbruch's Formula and Conceptual Analysis," in *The American Journal of Jurisprudence*, 56 (2011), p. 55.

112 Cf. Heikki Matila, *Comparative Legal Linguistics*, Aldershot, Ashgate, 2006, p. 65.

113 Cf. Hans Kelsen, *Teoría Pura del Derecho*, op. cit., p. 71.

that they are not intrinsically *legitimate* per se according to those or other conceptions, thus robbing positive law of grand narratives that pretend to imbue it with a halo of ultra-respectability supposedly arising from beyond. Therefore, conscience objections, civil disobedience, and other challenges to implementing the law are neither ruled out nor intrinsically contrary to the virtues expected of members of a given political community member.

Instead, the law is prone to improvement or contestation via legal venues, provided that they exist and are reasonably available and meaningful, and also open to questioning based on extra- and meta-positive legal notions, which in turn do not challenge the legal nature of positive law, thus ensuring their coexistence, as argued above. Therefore, the absence of venues for law reform is socially problematic and could lead to *de facto* challenges to authorities.

These considerations align with what some theological conceptions of natural law posit, for instance, in rendering "unto Caesar the things which are Caesar's; and unto God the things that are God's."[114] Non-theological natural narratives and non-naturalistic standpoints of assessment likewise benefit from a clear delineation of different ontological realities (positive and non-positive standards), lest they are accused of confusing normative with descriptive exercises.

A question ensues, however. Using the example of natural law, why can non-legal normative assessments of positive law eventually lead to conscience calls to not comply with it? This can be translated either into civil disobedience or non-public refusals to comply. As I have argued, none of this endangers the autonomy and validity of the law. It is nevertheless interesting to ponder upon phenomenological aspects illuminating why the roles (consciously and unconsciously) shaping our identities may end up making it more or less likely that alternative normativities are even more fervently embraced than legal and State allegiances—which can thus end up being merely imposed and artificial and probably rebelled against.

This question is most important since normative entrepreneurs can persuade individuals and groups they influence to behave in one way or another *vis-à-vis* positive legal demands, strengthening or weakening them. I will now proceed to explore this fascinating question.

4. The emotional shaping of our attitudes toward normativities by our identities

Normativity explanations of a rationalist or theological kind often explore how some rules and principles can be accessed via a rational derivation from foun-

114 Matthew 22:21, King James version Bible.

dational sources, which include notions as different as freedom,[115] revelation, or primary norms, including possible natural legal considerations explored in the preceding section.

Nevertheless, I contend that authors such as Nietzsche and Heidegger can provide some additional insights into how, apart from the identification of a given formal source of norms that the mind can rationalize and identify, it is often the case that one is moved to act in a certain way out of emotional motivations. This can lead to appeals to behave in ways that are even contrary to postulates constructed on (alleged) rational bases, for instance, some of those about legal demands. Therefore, intentional disobedience of legal demands may appeal to reasons provided by emotionally influenced criteria. It is thus important to explore them to have a fuller picture of the dynamics that can be present in civil disobedience and related phenomena.

4.1. Emotional and existential motivations to comply with or disregard legal commands

A motivation to act contrary to standards from a given normative system can come, curiously, from another one, as explored in the previous sections. There are normativities embedded in identities adopted by or thrown upon human beings insofar as they suggest or call for choices or *ways of deciding* how to choose or conduct oneself. Moreover, those demands could oppose other demands belonging to a different normativity while having claims of authority and expectations of obedience concerning one same individual.

This is so much so that appeals to a given action through various artistic or literary styles, empathy, or feelings of "poetic justice" may override someone's obedience to a given rationalized (or also emotionally held) rule. This can be confirmed by the widespread use of manipulative strategies of a conspiracy or patriotic kind that seek to exploit such dynamic, among others, or seen in martyr-like defiance of the law, underlying which individuals sometimes even attach greater priority to what they "feel" as drives—in a Dionysian way, one could say, borrowing Nietzsche's expression—over what others argue in an "Apollonian" fashion.[116]

In the end, it would be problematic to have a blanket condemnation of this as always irrational or wrong. Indeed, Arpaly Nomy has argued that emotional motivations could sometimes lead to praiseworthy conduct even if it turns out

115 Cf. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, Cambridge, Cambridge University Press, 1997, pp. 52–54, 57, 60, 66.

116 Cf. Daniel Came, "The Themes of Affirmation and Illusion in *The Birth of Tragedy* and Beyond," in John Richardson and Ken Gemes (eds.), *The Oxford Handbook of Nietzsche*, Oxford, Oxford University Press, 2013, pp. 213–215, 219, 223.

to be contrary to what a given positive law demands, and certain considerations suggest to an agent that the latter must be followed. Moral agents may be justified in deciding not to heed legal commands out of giving in to their feelings and/or emotions (which in turn depend on their perceptions) and will be acting on behalf of moral reasons. They will simply fail to be *intellectually aware* of them.[117]

Judgments about the appropriateness of *choices* of normative-like emotional motivations are better conducted on a case-by-case basis. Curiously, a rational analysis can aid in this regard. For example, one can think of someone disobeying domestic norms that are inimical to refugees out of solidarity and empathy. Conversely, as a negative example, one could see someone irate and moved by racist emotions to breach rationally justified norms protecting human beings—the same norms also have emotional support.

To my mind, human beings may end up defying norms out of emotional impulses or motivations, among other reasons, because their emotions can be based on and shaped by other normative perceptions. Hence, rather than setting aside and rejecting all normativity, individuals end up heeding what they see as priority or higher norms or, simply, that they "ought" to behave accordingly, which is the crux of normativity. Normativity motivations and demands would thus be a composite or complex in which emotional and other elements are present and mutually influential, as happens with calls for compliance with State laws on "patriotic" considerations.

One possible underlying explanation behind this argument is that our "possible choices" and expectations of behavior are molded by perceptions, standards, and assumptions ingrained via education, acculturation, identity election, and other processes that lead to the internalization of normative considerations. These elections may be rationally explained by some observers. Nevertheless, there can also be an emotional dimension in which people find themselves giving sense, meaning, and interpretations to the realities in the world they interact with based on their roles and placement in the "world" or "reality" (as perceived by them), which resonates with the structure of care posited by Heidegger.[118]

When those behaving according to emotionally loaded normativities are highly trusted or persuasive in communities, their influence vis-à-vis other normativities can prove decisive regarding their effectiveness. I will now proceed to explore these issues and why they may occur.

117 Cf. Nomy Arpaly, "Huckleberry Finn Revisited: Inverse Akrasia and Moral Ignorance," in Randolph Clarke et al. (eds.), *The Nature of Moral Responsibility: New Essays*, Oxford, Oxford University Press, 2015, pp. 142–143.

118 Cf. Matthew Ratcliffe, "Why Mood Matters," in Mark A. Wrathall (ed.), *Heidegger's Being and Time*, Cambridge, Cambridge University Press, 2013, pp. 157, 164, 167–172; Steven Crowell, op. cit., pp. 322, 327–329, 332; Scott M. Campbell, op. cit., pp. 30–32.

As Korsgaard put it, human beings are "condemned" to the plight of being normative agents insofar as we must choose how to behave.[119] It is an existential (constructed) reality, seen as a plight or something admirable. The simplicity of this assertion notwithstanding, normativity is a highly complex issue. On the one hand, while some conceive of it in a Manichean or binary fashion, norms can do more than only prohibit or permit conduct. They can also encourage, discourage, recommend, suggest, tolerate, and more, as argued under Islamic traditions and legal theory.[120] Hence, while sometimes an *interpretation* of a given normative standard ends up in an identified expected conduct one "ought" to align to, in the end, it provides us with reasons or arguments with which to decide how to behave. In other words, normativities are means that both require *and* allow us to "choose."

In my opinion, as some ideas of Camus and Sartre suggest, by choosing from among the possibilities of behavior we have, we may build our reality and identities insofar as we create "ourselves through our choices and actions."[121] These, in turn, will have a particular normative pull in the future—via habituation or consistency demands.

4.2. Contradictions between conflicting legal and non-legal normativities

Furthermore, while attention is often paid to the contradiction between conflicting standards and whether one or the other gives way or they can somehow coexist, I would say that another critical issue related to tension pertains to that between normative *systems*. Dating back to ancient Greece, the tale of Antigone has been considered to exemplify the opposition between human-made (specifically, State) and ethical norms and the dilemmas about where individuals' loyalties ought to lie in that regard, along with the consequences of disdaining either system.[122]

While those and other considerations can be found if one digs deeper, discussions about them often occur from a theoretical and formalist rational perspective. However, if one wonders why some feel some allegiance to a given normative system and how ties to multiple ones can happen (imposed, embraced, or "accepted" without a conscious design, in a way that Heidegger

119 Cf. Steven Crowell, op. cit., p. 325.

120 Cf. Khaled About El Fadl, "The Islamic Legal Tradition," in Mauro Bussani and Ugo Mattei (eds.), *The Cambridge Companion to Comparative Law*, Cambridge, Cambridge University Press, 2013, p. 304; Declaration of Judge Simma to: International Court of Justice, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*.

121 Kevin Aho, "Existentialism," *Stanford Encyclopedia of Philosophy*, 2023, available at: https://plato.stanford.edu/entries/existentialism/, last visit: 7 March 2023.

122 Cf. Separate Opinion of Judge A.A. Cançado Trindade to: Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, paras. 8–9.

would deem as inauthentic but not any less relevant or influential),[123] it is possible to consider that often, it is an emotional sort of trigger that propels individuals and groups to act one way or another toward norms of a given system: rejecting them, heeding them, obeying them, accommodating seemingly contradictory demands, attaching greater or lesser priority to a normative system, or else.

Rational considerations, such as the desire to avoid punishment, can play a role in this.[124] However, emotional influences and motivations (conscious or not) can also be present. Moreover, this emotional layer or dimension is no less influential or normatively relevant than a rational one.

Likewise, one can find examples of situations in which a feeling of witnessing (in)justice makes someone even accept the consequences of breaching a law because it is perceived as unfair. For example, as mentioned in Section 1, Henry David Thoreau chose not to pay taxes. He faced the consequences of avoiding funding or financially (even indirectly) supporting a war against Mexico, slavery, and actions against indigenous people due to these actions promoted by the State being (bravely) seen by him as illegitimate.[125]

Phenomenological considerations about the interplay between normativity and emotions and how they may lead to emotional(ly charged) normativities can shed light on analyzing the causes of those dynamics and decisions. As argued in Section 1, norms and compliance with them are *instrumental*. They are meant to be followed by whoever enacts or "discovers" them to achieve a specific goal. Moreover, abiding by (interpretations of) them leads to outcomes, being it thus appropriate to conceive of them as "means."

When seen in the light of their objectives or effects, they are thus a *means* toward their achievement—purposefully or in terms of causality. Their objectives, in turn, can be neutral, positive, or negative when examined from a *normative* point of view (under normative systems that differ from those in which the respective standard was created, including conflicting ones). Among possible objectives, one can find many possibilities: prosperity, peace, economic transactions, security, preventing dissent, protecting minorities, and many others. Just as norms, objectives can conflict with one another, within the same normative system, or with those of another one.

Secondly, particular phenomenological visions find that humans likewise perceive certain "objects" in their lives through the lenses of their context and au-

123 Cf. Scott M. Campbell, op. cit., pp. 31, 36, 40.

124 Cf. Harold Hongju Koh, "Why Do Nations Obey International Law," *The Yale Law Journal*, 106 (1997), p. 2601.

125 Cf. Henry David Thoreau, *On the Duty of Civil Disobedience*, 1849, eBook version available at: <https://www.ibiblio.org/ebooks/Thoreau/Civil%20Disobedience.pdf>, last checked: 24 January 2022; "Civil Disobedience," *Stanford Encyclopedia of Philosophy*, 2021, available at: <https://plato.stanford.edu/entries/civil-disobedience/>, last checked: 24 January 2022.

thentic or inauthentic choices; therefore, they can be experienced as "means" toward something with meaning for themselves.

As a result, normativities can play two roles in real life: as external objects and as underlying motivations. As to the first, they can be seen as *external* objects that are hateful, worthy of praise, indifferent, or else, in terms of how they affect and impact what moral agents care for. That is to say, norms can be objects *interpreted* subjectively and emotionally by those in the world, i.e., not only rationally but also in light of how they are seen due to our choices and non-chosen realities.

For instance, a given norm on foreign investment that demands not removing a license of exploiting a forest would be seen as something positive by someone attaching importance to an increase in employment, perhaps because their "prestige" depends on having a business, because of how they think the human world is meant to "operate," or because of past unemployment experiences that hurt them. In contrast, someone whose family was displaced and targeted due to their being environmental defenders, or an individual who cares deeply for the environment in emotional and even religious ways, would probably reject that law by *perceiving* it as unfair despite acknowledging its formal reality and *defying* its implementation.

This is a descriptive appraisal that does not prejudge that evaluation by the moral agent. Whether it and the chosen means of non-compliance are legitimate from the perspective of virtue ethics is a different question, already explored in Section 2.

Altogether, in those cases, we see the norms as "objects," *just* as the lectern in Heidegger's example[126] is an object which, due to our being in the world and authenticities and non-authenticities in terms of identities, are perceived and interpreted differently by individuals in terms of meaning and instrumentality. This is one possible dimension of norms from a phenomenological point of view.

Curiously, this way of perceiving norms in a non-rational or formalistic, but instead in an existentialist way, betrays the same sort of different perception of reality according to the Apollonian and Dionysian distinction drawn by Nietzsche.

That is why some artistic depictions of the struggles against the law, for instance, in Kafka's *The Process*, are shown as conflicts with burdensome and oppressive normative systems with endless and impersonal (inhuman) procedures based on expectations about how things "ought" to be, which are hence normative. Likewise, in George Orwell's depictions and denunciations of political abuse in his books, individuals can emphatically identify with the

126 Cf. Scott M. Campbell, op. cit., pp. 29–31.

characters in them, "feel" the struggle, and gain a sense and even impassioned energy, propelling them toward rebellion.

Conversely, some artistic pieces can highlight the importance of coexistence through the respect of certain norms (of any given system) and inspire the respect of the law even when it is detrimental to someone's selfish interests if that is the case. A contention I make is that, as a result, emotions do not necessarily entail opposition to norms but rather to *some* of them *on the basis* of other norms, from which they partly flow—and the understandings and interpretations of which they also contribute to shape.

The reason why this is so, I believe, is because apart from the dimension norms have as *objects*, which permit them to be seen and evaluated, they are *also part* of our identities (authentic or not), thus permeating our whole reality and *having an impact on how we perceive norms and other objects*. In other words, norms shape and are shaped (through interpretation and practice) by the individuals' (as addressees or lawmakers) existential standpoints, which are molded normatively.

For instance, if we deem a given rule unfair (i.e., we see it as a negative *object*), it may be so because it stands in opposition to a given set of assumptions or standards (hence, our observation stems from a phenomenological perception that is at least partly determined by normative considerations). Altogether, identities are normative as well and thus *impact* how we perceive and relate to others.

In the case of an example of why an individual offers presents to their spouse,[127] I suggest that they may be motivated by a flowing normativity of gratitude, debt, commitment, and affection, among others. What expected conduct this entails, expressed in a multiplicity of possible behaviors one should abide by, is a normative choice question. Alternatively, think of the example of why someone will feel quite pressurized to attend a friend's wedding: There is no juridical obligation whatsoever, but normativity nonetheless influences the considerations, identification of possible choices, and conduct.

In sum, normativities are both objects and part of the background of identities that shape how we perceive: When we evaluate the former, we do so from the latter's perspective, and the latter is shaped by considerations of the former. Normative traditions often speak of dualities in symbolic ways, e.g., two swords, two cities, and others. Augustine of Hippo's contrast between the city of God and an earthly one is an apt example in our discussion, considering the idea of belonging to the former when someone opts to behave in a given way, which we might well consider as normative, among other things.[128]

127 To use an example provided in Steven Crowell, op. cit., p. 329.

128 Cf. Stanford Encyclopedia of Philosophy, "Saint Augustine," 2019, in section 8: History and Political Theory, available at: <https://plato.stanford.edu/entries/augustine/>, last checked: 24 January 2022.

Borrowing from the title of Charles Dickens's novel contextualized in the French Revolution, an era of opposing loyalties and normativities, in transition no less, I would say that there are often simultaneously at least two cities or planes and dimensions of normative impact in our existence. There can be tension when they conflict, and choices are to be made; even not making any *is* a choice.

Furthermore, everything we do or fail to do may ultimately amount to a normative election or, at the very least, have normative implications—e.g., even on there being no trump cards and thus no election is made, the status quo is propped up, for example by positive law to persist, even if it is seen as illegitimate. Decisions on conduct are based on a given normativity or blend thereof, conscious or not, given that we have options and (limited?) freedom of choice. When choosing, we heed a given standard (even newly constructed) based on a normative background, influencing what we choose and which object we serve by heeding an instrument (the norm).

Normative systems are manifold and include but are not limited to family, religion, civic, and decency. As is often the case, perceiving reality from the perspective of other normativities different from those connected to one's identities and those of normative "authorities" making demands on us (heteronormativity, i.e., norms created by other entities different from the agent whose conduct they expect to abide by their demands) can shed light in ways that permit to better understand better and critique the normativities that we accept (or resign) as placing demands on us to choose in certain ways.

Granted, heteronormativity is not necessarily equated with positive law. Apart from demands created by States and the lawmakers of international law and other systems through their sources, non-legal authorities of a religious or other kind can likewise impose demands on members or those expected to have reasons to obey. However, this text is concerned with the possible defiance of legal ones.

Some popular wisdom sayings reference an intuitive notion of "poetic justice" from time to time. Considering how they express longings or expectations that are deeply rooted and motivate people, the underlying aspirations they convey should not be dismissed lightly. Notably, authors such as Martha Nussbaum have explored related arguments about the importance of emotions and love, among others, to understand notions of justice.[129]

Concerning the issue of normativity as explored here, a connection can be traced in terms of individuals attaching meaning to different situations, among others, based on their "justice" or "fairness" expectations, which include an emotional component and, in turn, can be shaped by identities, roles, and relationships.

129 Cf. Martha C. Nussbaum, *Political Emotions: Why Love Matters for Justice*, Cambridge, MA, Harvard University Press, 2013, p. 380.

Needless to say, the notion of what justice *is* proves to be an elusive one. As Hans Kelsen pointed out, different versions and variations throughout history prove to be somewhat vague or contradictory with others from a theoretical or rational perspective, which is why certain universal absolute versions of justice can be problematic.[130] Despite this, individuals keep attaching great relevance to their deeply ingrained notions of fairness and, consciously or not, allow others to be guided by them in their interactions. Accordingly, they are no less relevant than clear theoretical constructions of a normative kind—and are often even more impactful.

Notwithstanding, notions of fairness can still be explained to a certain extent from a theoretical point of view while making room for intuitive and emotional influences that individuals "feel" existent despite their inability to explain them clearly. This can be understood in a way that gives credence to interesting arguments from a phenomenological and existentialist point of view. It could be argued that emotional and rational expectations of fairness can be cross-fertilizing and mutually influential.

For instance, some people may have had an ingrained notion of fairness intuitively or rationally that was shaped along with further developments and became cultural, later impacting the expectations of other individuals due to their consciously—or unconsciously—adopted identities and roles. Even if they can be somehow rationalized, they cannot always be so. They certainly influence how some individuals look at reality insofar as they are embedded in different cultures, forming part of the fabric of beliefs and attitudes of groups.[131]

However, normativity is neither always nor necessarily based on group dynamics, considering how some individuals may cling to some ideas of justice or duty in ways that defy those of groups they grew up in or were a part of once: either because they have a personal creed or adopt in piecemeal other codes. Individuals can also shape normativity and hence impact cultures.

Furthermore, normative expectations can be adopted (consciously or not) for rational or emotional reasons, or a blend thereof, making people *choose* in ways that challenge demands from other quarters and are framed in rational or emotional ways, socially or biologically. For example, Victor Frankl has explained how deeply held beliefs of individuals can be a factor in making them choose to conduct themselves in ways that seem heroic or that greatly defy the odds.[132]

130 Cf. Hans Kelsen, *What is Justice? Justice, Law, and Politics in the Mirror of Science, Collected Essays*, op. cit., pp. 4, 21–24.

131 Cf. Julie Fraser and Brianne McGonigle Leyth (eds.), *Intersections of Law and Culture at the International Criminal Court*, Cheltenham, Edward Elgar Publishing, 2020.

132 Cf. Viktor E. Frankl, *Man's Search for Meaning: An Introduction to Logotherapy*, 4th ed., Boston, Beacon Press, 1992, pp. 82–84, 91, 136.

In the field of psychoanalysis, it has been considered that there are situations in which someone resorts to a defense mechanism or substitutive formation of intellectualization that entails distancing from affections and de-emotionalization, thus leaving issues potentially unresolved.[133] This suggests that otherwise, choices are often not only brought about by rationality but also with emotional and other considerations, insofar as—in my opinion—human beings are complex, holistic, and multi-dimensional, and our psyche is influenced by physical, cultural, nurturing, and other factors. The crux of normativity being *deciding* entails that rational factors are not the only ones playing a role.

People often call *responsibility* the crux of normativity, but I dissent. It is indeed a central element, but not its basis. This is so because responsibility, from the Latin *respondere*, is related to facing the consequences of one's actions under a given normative system. Still, this responsibility, being a *consequence*, is not the foundation. It can motivate conduct in the sense of the desire to obtain or avoid a given consequence. However, it is not the grounding, the (sole) motivation, or the justification of the (more or less vague) content of the norms as such—which, once again, need not be necessarily dualist in terms of prohibition and permission. Granted, one can say that coming up with and invoking norms also responds to standards from other systems.

Norms set some demands *and* expectations. By doing so, they compel people to *choose*.[134] There is an expectation from their *perspective* about which choices can and ought to be made according to what they set forth. This is confirmed if one thinks, as Kant's moral philosophy indicated, that normativity is about an *ought* instead of an *is* insofar as individuals may end up giving in to inclinations of their own in ways that fail to honor said normativity, which remains nonetheless.[135] Unlike Kant's arguments about the tension between rational normativity and natural inclinations,[136] normativities are often an enmeshed blend of emotions and rational arguments, as I argued above. It may be that the latter are sought for afterward in ways that justify the former or that the former follow after the ingrained internalization of the latter, among other possibilities.

Some normative tensions are hence related to the *plight* mentioned at the outset of the first part of Section 4. That is to say, it is about choosing (consciously or not) how to behave. As argued in the previous section, there is often a clash between normative systems, many of which can make demands upon a moral agent, who is meant to choose from among them, being it sometimes possible that they require contradictory things. Those systems are many: familial, political, ideological, legal, relational, ethical, and else. Apart from norm(ative)

133 Cf. Siegfried Zepf, "About rationalization and intellectualization," in *International Forum of Psychoanalysis*, 20 (2011), pp. 149, 153, 156.
134 Cf. Steven Crowell, op. cit., p. 325.
135 Cf. Immanuel Kant, op. cit., pp. 35–36, 54–55, 59–60, 64, 66.
136 Cf. Ibid., pp. 58–59, 61–62.

conflicts within a given system, there can also be problems between systems of the same kind—e.g., different legal systems a person is subjected to due to international elements—or of a different nature. This is because there are also contradictory demands from (different or one kind of) normativities people may be exposed to and aware of. Interestingly, there may even be intuitive normative considerations about (poetic) fairness.

Oliver Sensen, for instance, has argued that contemporary notions of human dignity underlying human rights demands may be more of an intuitive than a traditional or rational kind.[137] Human beings are highly cultural beings,[138] a bunch of *zoon politikon* in Aristotelian terms.[139] Biological paradigms, for instance, could be highly archetypal in the end and about a *particular human* interpretation of biology because we are not entirely dictated in terms of behavior expectations by it. Rather, fully embracing an *ideal* of biological aspirations ends up being highly ideological as well. Human sex, for instance, has been considered to be not only biological but also political and cultural.[140]

Notions of giving in to our instincts are thus no more Dionysian than what some feel as giving in to the tenets of a given religion or ideology. People can feel drunk and carried away by them, feeling even ecstasy in their renouncing of biological impulses. A phenomenological perspective can help explain why: this is because of our identities, some of which we construct in a rational and emotional amalgamation, and how they shape our perceptions related to the election. *Choosing* to see through the lens of a paradigm of a given kind can even make one *see* the other ones as misled. However, in the end, by doing so, one fails to see that they likewise see through some prisms that make our own choices seem misaligned. Our perception of what ought to be or not may thus be the product of conditioning, authentic election, or other factors.

Regardless, standards whose influence over us exists are highly influential. Sometimes, one can see through multiple normative "lenses" at the same time, being aware somehow of the different perceptions, demands, and expectations they produce on one, which prompts either looking for harmonization or conflict resolution. Thus, we not only choose how to behave but are also placed in positions requiring one to choose which sense of fairness to look from—there may be vague or contradictory normative or behavioral expectations in it as well. All of this implies that defying demands of the positive law may be very well grounded on normative bases, among others, in societies with different and even competing notions of justice.

137 Cf. Oliver Sensen, op. cit.
138 Cf. Julie Fraser and Brianne McGonigle Leyth (eds.), op. cit.
139 Cf. Aristotle, *Politics*, University of Chicago Press, 2013, p. 41.
140 Cf. Amia Srinivasan, "Does anyone have the right to sex?," *London Review of Books*, 40 (2018); Freddie Hayward, ""Class has dropped out of the feminist picture": Amia Srinivasan on The Right to Sex," *The New Statesman*, 2021.

Conclusions

The dilemma of whether disobedience with legal mandates in deliberate terms is appropriate is something that individuals often come across sooner or later in their lives. Sometimes, they do so for banal or even objectionable reasons, such as convenience or callousness, to get away with what they want, regardless of the consequences.

Moral agents may eventually find themselves with legal demands that entail or could lead to moral evil, which makes them consider whether complying may be legal but unethical. Indeed, different normativities may be at stake, which does not always make identical or similar claims but belong to different spheres, as Kelsen wrote.[141]

Acknowledging that ensuing defiance could be risky for those agents given the potential legal sanctions accrued, non-compliance could be seen as courageous and thus as virtuous. According to Alasdair McIntyre, courage is virtuous "because the care and concern for individuals, communities, and causes which is so crucial to so much in practices requires the existence of such a virtue."[142] Depending on the motivations behind the action, other virtues would also be involved, such as solidarity when harm or another injustice against others that the law could or does bring about is what the agent seeks to avoid being (morally) complicit with.

This is not only individually praiseworthy but could constitute an exemplary action improving the virtuousness of others and the betterment of societal dynamics. These are aspects with which virtue ethics has been concerned and why some constructions of classical theories that *prima facie* excessively frown upon deliberate disobedience with the law should be reinterpreted in ways that are perhaps more consistent with the foundations of virtue ethics. If they are conscientious and diligent, disobedience to the law can hence be virtuous.[143]

In a nutshell, my argument is as follows. The question of whether a deliberate choice to refuse to comply with the demands placed on a moral agent by a given provision of positive law can be explored from the perspective of different ethical approaches, including deontology and consequentialism. However, examining that question from the standpoint of virtue ethics can prove especially illuminating, considering how it expressly ponders—even more, practically *requires*, in my opinion, that moral agents take into account—nuances about the specific context in which agents find themselves and the tension between different virtues.

141 Cf. Hans Kelsen, *Teoría pura del derecho*, op. cit., pp. 131–132, 243, 331.
142 Ted Clayton, "Political Philosophy of Alasdair MacIntyre," *IEP*, available at: https://iep.utm.edu/p-macint/, last visit: 16 January 2023.
143 Cf. Harry Prosch, "Limits to the Moral Claim in Civil Disobedience," in *Ethics*, 75 (1965), p. 106.

I further posit that if harm and negative effects on others as a result of the disobedience do not take place or are outweighed by the injustice of a legal demand and alternative remedies with the prospect of effectiveness to address a potential injustice brought about by the law are not feasibly present. Disobedience in a deliberate fashion can sometimes prove to be ethical and even, in exceptional cases, the most responsible course of action. The keywords of such an argument would, hence, include civil disobedience, virtue ethics, injustice, and contingency.

As to the implications of arguments based on natural law calling for challenging or improving positive law—perhaps via the former—I think that Hans Kelsen was correct in his efforts to separate the legal realm from other domains insofar as law has a *certain* autonomy with its dynamics and technicalities that could prove to be malleable and subject to covert political manipulation otherwise.[144] That said, some legal positivist positions might have been influenced by natural science paradigms[145] and, in his case, maybe by his skeptical outlook on justice.

After all, his *theory*, to the extent that it is not entirely objective in terms of law's autonomy since non-legal considerations unavoidable make their way into legal operations through human interaction and the multiple influences that humans have, is not descriptive but instead points toward an *archetype* of what law "is."

Positive law prevents anything from passing as "legal," but this prevention takes the form of limits within which there are margins where competing interpretations can exist, the influence of which is sometimes extra-legal. This is so because, due to the human involvement in interactions with the law, authorities enrobed with the formal power and participants in legal operations could end up becoming some "Trojan horse" insofar as their legal operations and interactions can never be fully *impervious* to non-legal considerations and elements. After all, the law is used to or in ways that affect political and other interests—even sometimes in terms of perception and attitude modification and social engineering throughout history. Agendas are shaped and served by how the law functions.

Nevertheless, due to its humble ambitions, remarkably positive law theory can highlight the underlying assumption of its non-interference with extra- and meta-legal criteria and assessments, thus admitting and even paving the way for the possibility of calling for law reforms (or explaining civil disobedience) on their basis.

144 Cf. Hans Kelsen, *What is Justice?: Justice, Law, and Politics in the Mirror of Science, Collected Essays by Hans Kelsen*, op. cit., pp. 374–375.

145 Cf. "Legal Positivism," *Stanford Encyclopedia of Philosophy*, 2019.

This can be done, curiously, via the contemporary rule of law demands (requiring the change of the positive *law* in light of criteria not necessarily held by a given law) or natural or critical legal analyses, which acknowledge both the autonomy of legal systems and the influences of politics in a given way, for instance in Constitutional interpretation due to its being a political instrument, or because interpretation is sometimes seen as "politics" due to how elections are made of one of multiple alternatives positive law techniques permit.[146]

However, these criticisms must accept, in turn, the independence of positive law from their assessments, as Antony Anghie himself said in terms of the necessity of a correct positive legal analysis prior to critical ones for the latter to be appropriate.[147] Hence, normative and descriptive realms are autonomous but influenced by the other, permitting legal operations and their constant evaluation.

In sum, as John Finnis has argued, it is possible to challenge problematic legal operations and institutions both from an intra-systematic way, that is to say, from within the respective positive legal system and its venues, making non-compliance problematic when there are reasonable prompt alternatives to modify the law (unless exceptionally when the matter is sufficiently serious and pressing); or externally, by appraising it on other grounds which do not prejudge or question their legality at all, being mindful that such an evaluation may lead to someone deciding to refrain from doing what the law says.[148]

Still, those questions are questions that we must be concerned about as human beings who are responsible since the law may have negative and positive impacts and effects, and simply identifying its content as legal does not nullify them and our human responsibility toward them, especially if one is well- or relatively well-versed in the law and knows how to expose or attempt to modify and adjust it. As the saying goes, with great power comes great responsibility. Those versed in the law are morally required to call for its reform when it leads to vices, social problems, attacks on dignity, or other unethical implications.

Moving on to the issues about our identities and how they may shape our attitudes toward different sorts of normativities, it is important to remember that human beings are highly cultural. Therefore, our interpretations of competing normative demands are influenced by our perceptions, partly or primarily shaped by our identities, consciously assumed or unconsciously adopted. These aspects coalesce in ways that, among others, present what we see as the "options" of behaving one way or another in all the situations we face.

146 Cf. Among others, cf. the discussion of Critical Legal Studies in: Andrea Bianchi, op. cit., p. 136 and onwards.
147 Cf. Antony Anghie, "Critical Pedagogy Symposium: Critical Thinking and Teaching as Common Sense–Random Reflections," *OpinioJuris*, Blog, 31 August 2020.
148 Cf. John Finnis, op. cit., pp. 357–366 (especially p. 360).

This implies that we *must* choose how to act or refrain from acting, among others, upon laws perceived as contrary to the tenets of normative demands from other systems perceived as more legitimate. In that case, the moral agent could see compliance as virtuous or being under the burden of identifying, depending on how one sees it.

We are presented with their demands and suggestions when deciding whether to heed the positive law or a different normativity. Sometimes, they may be made to overlap in harmonious ways, and at times, they unavoidably contradict each other. In turn, tensions and ambiguities may sometimes exist within those systems. How and what we choose is influenced by how we entirely decide (consciously or not, determined or somewhat freely) to act according to a given normative factor and how normativities shape our identities and perceptions.

This explains an interesting duality: norms set expectations, and internalized normativities propel us to act toward those norms in one way or another. As a result, norms are both "ought" objectives (we may fail or succeed in living up to them) and motivating triggers or impulses, no matter how rationalized they have been. Both conduct standards and motivators blend intellectual and emotive factors.

We have a choice: we can seek to maximize an empathetic approach that sets *demands* upon those normative goals and motivators in light of dignity, environmental, and other considerations, breaking the normative third wall of our perception screens. By doing so, we act not only in a humane, i.e., in a normative way in terms of choice, but also upon its consequences: responsibly. Moreover, this appeal is normative based on expectations from other normativities, as is often the case. Thus, defiance can sometimes be virtuous when it is the most responsible course of action in light of demands seen as relevant in the specific context in which a moral agent is found and faced with existential questions. After all, the state and positive laws are constructions and only some of humans' different factors and demands.

As Hannah Arendt and Tocqueville considered, just as an association can pose some challenges to political groups, it ultimately provides an important guarantee against oppression. A merely legalistic and Court-based response to the disobedience of the law can fail to address multiple of its realities, which are manifold and can include existentialist, extra-legal, and ethical considerations.[149] Such a response may even be socially pernicious, perpetuating tensions (which can challenge the *auctoritas* of those in power and social harmony) and injustices if they exist.

149 Cf. Hannah Arendt, op. cit., pp. 96–99.

Conversely, responsibly deciding not to heed a legal command when following a given legal mandate would be vicious, as this text explored, can sometimes be a virtuous thing to do. These considerations must be pondered upon by lawyers as well. The fact that law is normatively autonomous neither entails that it is isolated nor that other normativities are irrelevant. Quite the contrary: given their knowledge of legal provisions and interpretations, they are responsible for assessing whether they are immoral to voice the need to promote changes *de lege ferenda*.

Authorities are also under intense responsibilities, given how it is in their hands to remedy injustices and serve the people. Furthermore, all affected and addressees must morally consider that theirs are but some of the multiple interests at stake and that disobeying may be virtuous or vicious depending not only on the wrongness of the law(s) but also on the conditions when it is justified and legitimate.

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