

The Corona Crisis as a Test of National Habitus: The Imperative of Obedience¹

Marta Bucholc

The Coronavirus pandemic has caused many human tragedies, and this will be the primary basis on which its consequences will be debated. Not only out of respect for human suffering, without the consideration of which law is but an inhumane cutting edge of abstract formal normativity. But also because of the effect that human suffering and human tragedy – or, in most cases, the threat thereof – has on people’s thoughts, words and actions. From the socio-legal point of view, the Corona crisis has triggered a wave of phenomena about whose exact weight we will long be pondering, and the gravity of which cannot be doubted.

Direct existential threat understandably dominated the public Corona debate in early 2020, with hectic discussions about the number of intensive medical care stations, hospital beds, masks and respirators – in addition to the gruesome counting of deaths and infections and the indefatigable curve-drawing in all possible media. Accusations of indolence, negligence and carelessness filled television shows and newspapers, in some countries more than in others. Interestingly enough, it was the great revival of the intercountry comparison that struck the eye in the pandemic’s first weeks. All the discredited national stereotypes were suddenly in play again, used as handy *post hoc, ergo propter hoc* heuristics: the lighthearted and nonchalant Italians, the stubborn Britons, the independent Swedes, the all-too-well-prepared Germans, the disciplined Chinese, Koreans and Taiwanese.

Gradually, it was the latter point that dominated the image of the pandemic: the discipline. When it became clear that the long-term goal of every single society on Earth was to stop or limit the spread of the disease, almost all states applied some or all of the range of extraordinary measures: compulsory medical testing, quarantines, school closures, prohibitions to move in public spaces, banning gatherings of people, closures of public spaces, shutting down shops, businesses, cultural institutions and public facilities. Some countries applied a near-total lockdown, which was, for all practical purposes, a house arrest order that was imposed on every single person in the country – not by an individual court decision issued by an independent judiciary preceded by a due process of law, but by a universal and general decree of the executive.

And, statistically speaking, all around the world, people obeyed.

¹ The author acknowledges the support of Polish National Science Centre in Kraków (“National habitus formation and the process of civilization in Poland after 1989: a figurational approach”, 2019/34/E/HS6/00295).

Where have all the non-conformists gone?

Of course, not literally everyone around the world responded with obedience, and media reports were filled with tales of desperados who simply had to “get out there” for a number of reasons, ranging from very serious existential ones up to no less serious and probably no less existential like the bad need to get a drink while under quarantine. However, the sheer fact that in all countries, the lockdowns and limitations seem to have taken effect as of the end of April 2020 serves as *indirect* proof of compliance by a majority of the population.

Why do people everywhere obey, despite all the differences between them? A socio-legal scholar presented a year ago with a moot question of how the world would react to an extraordinary situation like this would probably have come up with a number of hypotheses, such as these: In the countries where the belief in legitimacy of law is strong, and trust in public institutions is solid, the extraordinary measures would be effective, and the people would by and large obey. However, in the countries where the authorities are despised and the power of law is demonstrably inefficient, the laws made in order to fight the epidemiological crisis would not work, simply because people would not comply with them. If people disregard tax laws, park their cars wherever they like and litter in public, why would they obey lockdown rules introduced to fight an epidemic?

Of course, there is a lot to be said against this line of argument. It is based on an idea that law is in fact a homogenous concept and that its validity is based in a homogenous validity culture. In this simplistic variant, the study of the validity of law would work in a “broken windows” paradigm: if rules in one sphere of social life are adhered to, it increases the probability that the rules would also be applied in other spheres, and vice versa. People who “cheat” on the water ban to sprinkle their lawns during a hot summer would also cheat on the quarantine rules, simply because they do not, as a rule, follow the rules.

True, the laws made to counter the epidemic are based on some values which seem to have made quite a career in many of our societies: long life, health and security. Water and littering bans do not work that well as a comparison; people may disregard the rules which they perceive as mere fastidious overregulation, but still comply with those which are legitimized by their important goal. Health and security are important for us, for a number of historical and structural reasons to the understanding of which many students of human societies have contributed substantially, including in particular Thomas Hobbes, Michel Foucault and Ulrich Beck. People can be governed efficiently by an authority whose legitimacy claim relies on human longing for health and security, especially in its late-modern biopolitical rendition based on the steel-hard logic of populational risk assessment.

Habitual sources of law-abiding behavior

However, the laws against an epidemic are not by the same token the only biopolitical governance measures in place. If long life, health and security cause a leap in obeying the law, a good proxy measure of expected compliance with anti-epidemic measures could be other laws and regulations made to safeguard these exact same values: traffic regulations (in particular speed limits), smoking restraints, vaccination schedules, rules on the sale and consumption of alcoholic beverages, control of other psychoactive substance use and trafficking, anti-smog policies, etc. However, we observe not only deep-running differences within societies in respect to compliance with all these and many other rules, but also intersocietal differences. Norbert Elias once suggested that street and traffic behavior would be an excellent comparative indicator of the state of the process of civilization in a society: it would also be an excellent measure of general attitude towards the law. Some drive carefully, stick to the speed limit and never park out of place, even though nobody is watching. Others, however, are more than happy to break the rules, especially when no one is there to tell them off. And, apart from various other differences in this respect, there is also a national pattern behind it.

Raymond Fisman and Edward Miguel documented this pattern in 2007 in their research of United Nations officials' parking habits. They found that diplomats from high-corruption countries, who until 2002 were protected by diplomatic immunity, accumulated significantly more unpaid parking violations than those coming from low-corruption countries. Clearly, finding a parking place can be a nuisance in New York... However, in 2002, the rules changed. From now on, those caught violating parking rules would need to surrender their diplomatic license plates to law enforcement. Suddenly, someone was watching, ready to tell the easy-rider off. The result was a sudden drop in the number of unpaid violations². Fisman and Miguel conclude that "cultural norms and (particularly in this context) legal enforcement are both important determinants of corruption"³. But one could also reason the other way around. The state of corruption and the cultural norms interplay constantly, one of them conditioning the other. While some cultures simply do not seem to support high corruption levels, the societies dominated by these cultures also tend to have stronger and more stable public institutions and more equitable, predictable legal systems that are, on the whole, better at watching citizens and telling them off. However, they fortunately do not need to do this because the societies are watching themselves, by way of internalized self-constraints.

The Eliasian concept of a national habitus, as a part of human second nature formed by the participation in the figuration of a nation-state-society, links these two aspects of law-abiding behavior: the institutional framework created in a historical process of social change translates into a pattern of self-constraints which can more poetically be called habits of the heart, mind and body, prevailing in what Elias called a state-society. However, this benign scheme of culture and state institutionalization going hand in hand should not make us blind to the reality of individual freedom and social deviance. Humans are able to act against their habits if

² See Raymond Fisman, Edward Miguel, Corruption, Norms, and Legal Enforcement: Evidence from Diplomatic Parking Tickets, *Journal of Political Economy*, 2007, vol. 115, no. 6: 1020-1048.

³ *Ibid.*, p. 1020.

somebody is watching to tell them off, and they are also capable of changing their habits, especially in the face of a strong external constraint, such as one coming from effective law enforcement. But some of them are harder to change than the others, and not all of them can be changed at once. That is what Elias described as “drag-effects” of habitus; while circumstances change, some habitual layers that are harder to change just linger, sometimes despite their blatant counter-adaptiveness in the new environment.

Global-scale social experiment: National habitus-testing in times of Corona

In recent world history, we have never had such an opportunity to observe the national habitus being tested comparatively in conditions verging on a global social experiment. The same primary factor (the virus) caused essentially similar reactions, implemented by way of law. It is not an accident that Max Weber, defining legal order, explained that there must be a chance of obedience, and that the obedience cannot in fact be a straightforward consequence of the prevailing moral rules or suchlike, not to mention other automatism of non-normative nature. The law is a law because it is not 100% effective *per se*. Differences in measures taken against the virus are, of course, matters of immense importance for the quality of life of the affected populations, but in Europe they can in fact be reduced to a kind of narcissism of minor differences in most cases (How long do we have to stay at home? When will the schools open? What size stores can open when? How many people can talk to each other in public from what distance? How many people can pray together? Are children allowed to go out, too, or only the dogs?). True, in some countries, the measures applied verge on the extravagant: a prohibition of people under 18 moving outside on their own for any reason whatsoever, a prohibition of more than two people being together in a car, irrespective of whether they live in the same household or not, etc. But, on the whole, with an important legal exception of the approach to using personal data and relaxing the regime of data protection for infection prevention, the measures applied aggregated to a state of exception everywhere, and the side-effect research question of the global Corona experiment was: how do various national habitus react to this state?

Some national habitus are not only less trustful towards their rulers than others, but they are also better at circumventing the law – any law. Let’s return to Weber, who insisted that the existence of the legal order depends on the chance that people will obey and not on the effective possibility of the authorities to punish the violators: nobody can control, much less punish, a whole society. And practice is everything in matters of lawbreaking. Some societies are more skilled at it than others thanks to their historical paths, which do not necessarily need to go back a long time. Even in Europe, especially in the East and in the South, there are many societies with very recent stories of successful long-lasting anti-systemic partisanship. The memory of such experience and the layer of national habitus corresponding to it is a cultural resource which could be mobilized against the Corona-prevention regime. However, it seems that it was not.

The result of the global Corona experiment is, in all probability, that the states differ more than societies do, a painful conclusion for a social researcher. The legal, political and institutional setup of states, as well as the good old factors like geographic conditions, population sizes and economic status, seem to matter in the epidemic, whereas societies just conform to the rules. The universal global imperative of obedience prevails over particularities of validity cultures and intricacies of national habitus. While the Corona pandemic certainly did not translate into a global regime of unified biopolitics, but rather unfolded into a series of state-delimited nationalized epidemics, the societal reactions in all these state-determined units seem to be surprisingly conformist. Everybody reacts to the state of exception much in the same manner, unless these are some really minor differences we are after.

Of course, this conclusion only holds for the time being. As weeks and months pass, the inevitable habituation to new conditions will take place, and the old habits will die hard. Moreover, there are non-habitual, existential reasons for people to rebel. Especially the people whose precarious employment situation and thin financial reserves make them particularly economically vulnerable are now as we speak redefining their situation as a struggle for survival against the measures applied by their governments. Not even Hobbes believed that a human being is bound to sacrifice their own life following an order of the ruler, which is why he allowed a soldier in the battlefield to desert out of fear for his life... But this much exaggerated parable does not erase the question of sources of the obedience to anti-Corona measures, or, to rephrase it now, of the powerful uniformizing and conformizing effect of the state of exception.

Habitual effects of the pathos of exception?

The Corona crisis supports the insight that the 'state of emergency' has its own validity culture, which is not coextensive with the validity culture on which law of the normal state relies. In societies which have as little in common as possible in the global age, people obey their local Leviathans. The basis of their obedience, apart from health and security concerns, is the logic of the state of exception as such. The suspension of normal rules of social life, of many of the dearest civic rights and liberties, is in fact effective by virtue of a formal operation of removing the epidemic from the sphere of the normal. Normally, people would behave according to their well-embedded cultural models, but they fail to do so because the whole situation is moved beyond the area of the normal by a legal performative. The pathos of exception is literally related to experiencing and enduring the abnormal; the trouble is that there are no habitual instruments in our toolboxes for the abnormal. That is why we all behave more or less alike: we are being deprived by the state of exception of all that makes a difference.

Of course, this is a philosophical exaggeration. The state of exception is never exceptionless, and some people are allowed to retain more normality than others, which does constitute a difference in the uniformity. In the recent crisis, for example, people with dogs were somewhat privileged in comparison to those without them. Nevertheless, the mechanism of uniformization by abandoning differences creates a minefield of habitual effects of the pathos of exception.

The Corona Crisis in Light of the Law-as-Culture Paradigm

<http://www.recht-als-kultur.de/de/aktuelles/>

Will the validity culture of the state of exception withdraw and cede its place to the idiosyncratic validity cultures of the law for the normal times? And, to extrapolate on this, will the legitimacy of normal norms, the normativity of parking tickets, income taxes and trash bins, benefit or lose as a result of the unprecedented globalization of exception with its uniformizing effects? Will it become people's universal habit, a constituent of their global second nature, to just obey with no questions asked?

*Marta Bucholc is Research Professor at the Käte Hamburger Center for Advanced Study in the Humanities "Law as Culture". Her research focus is historical sociology, history of social theory, sociology of law, sociology of economy and sociology of knowledge. Her published books include *Sociology in Poland: To Be Continued?* (2016), and *Global Community of Self-Defense* (2015). She is a member of Academia.Net (Robert Bosch Stiftung network of women in science). She translated several books into Polish, including *The Sociological Imagination* by Charles Wright Mills, *Purity and Danger* by Mary Douglas and *Le Temps de Tribus* by Michel Maffesoli.*