

Reasons to Comply With the Law

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Date : August 12, 2019

Noam Gur, [Legal Directives and Practical Reasons](#) (2019).

Everyone agrees that law has a conduct-guiding function. Moreover, most legal theorists assume that this conduct-guiding occurs, or is supposed to occur, by providing reasons for action. This very readable book is about the *kind* of reasons to comply with the law that law can provide and—under favorable conditions—does provide. As most of us know, officials applying legal requirements largely act as if these requirements trump (nearly) everything else for law subjects. In terms made famous by Joseph Raz, they treat law as giving rise to *pre-emptive reasons* to comply. These are reasons that (a) are ordinary reasons in favor of conduct and (b) exclude some opposing reasons, in the sense that they are not to be considered in a law subject’s practical reasoning. But this is not how civil disobedients and otherwise law-abiding motorists treat many legal requirements. (The latter, notoriously, consider what appear to be excluded considerations, such as the speed of traffic and the apparent likelihood that speeders will be apprehended, to reach decisions about obeying the posted speed limit.)

This gives us two views about what sort of reasons law (potentially) provides for action: (1) reasons that pre-empt competing reasons, and (2) reasons that compete with others in terms of weight. Gur carefully criticizes the two positions as inadequate before developing a refreshingly different sort of answer. The reader will be surprised to learn what this difference implies about the law and its authority.

In a nutshell, according to Gur, what is wrong with the first, pre-emption model is that it provides the wrong answer in cases in which officials create a clearly very immoral directive, and in cases in which they create a directive that has a clearly very immoral application. In such situations, the law subject should not comply. This is true even when the legal officials have legitimate authority and are competent. Moreover, one cannot rescue the pre-emption model by arguing that all moral considerations are not excluded by—and therefore, not pre-empted by— legal directives (or by these sorts of directives). Gur contends that it is only by reasoning from the (entire) balance of reasons that instances of grave immorality in directive-application can be identified by the law subject.

In brief, what is wrong with the second, weighing model is that its method of reasoning is highly susceptible to a cognitive and motivational problem that legal regulation (*ceteris paribus*) isn’t. Gur contends that social problems are caused by the fact that people are fallible in judging the balance of reasons, in part because people commonly have cognitive biases. Law is less vulnerable to the biases—because of features such as the generality and prospectivity of its directives—yet it can solve these social problems. These facts help justify using legal regulation to guide conduct and provide a reason why the law subject should not rely on an individual assessment of the balance of ordinary reasons for (and against) compliance with a legal directive—such an assessment can too often be mistaken.

Gur defends a third position he thinks of as a middle ground that he calls “the dispositional model.” This model treats motivation as bearing on an agent’s practical reasons for action because, as Gur puts it in his last chapter “the *problem* is partly motivational,” so its solution must be also partly motivational. (P. 217.) According to the dispositional model, reasonably just and well-functioning legal systems give rise to reasons to adopt a certain general normative attitude toward the legal system. (This is in addition to the ordinary reasons that legal requirements sometimes give rise to.) The attitude in question is both

settled—“reasonably stable,” Gur says—and motivating. This attitude is composite; behaviorally, it shows itself in, or is composed in part of, a disposition to comply with the law. This disposition is deep-seated, yet defeasible in its force. Someone with it is persistently somewhat resistant to reasons for non-compliance, but never entirely.

Gur argues that his is the right position to take, given the likelihood of a law subject’s biases and the structural features of law in a system that meets certain conditions. We should adopt this particular normative attitude because its disposition averts some error in practical reasoning—in the kinds of good legal systems Gur has in mind. In other words, in legal systems meeting certain conditions, it is likely that we ought to comply. The disposition pulls against our contrary cognitive biases and tends to make us reach this conclusion. Yet our biases and our fallibilities in practical reasoning do not give us reason to go so far as to exclude opposing considerations in our practical reasoning when faced with legal demands.

Gur further argues that this distinctive disposition cannot be replaced by ordinary moral dispositions. You don’t have the normative attitude in question if all you have are moral attitudes such as respect for dignity, a commitment to justice, and sensitivity to the suffering of others. His argument is that reliance on moral attitudes may not combat biases against compliance with *mala prohibitum* directives, and that moral disagreement would undermine the “necessary compromises” law makes.

Space does not permit me to comment on his interesting discussions on related topics—such as an extended critique of Raz’s Normal Justification Thesis for authority and what research reveals about why people obey the law.

I think Gur is very largely correct in his major claims. And if so, it matters; for it raises a problem about the legitimacy of actual legal systems, such as our own. For: (a) legal officials act as if law subjects have reasons to comply even when the legal system isn’t reasonably just and well-functioning (and even when officials know or suspect this fact); and, as I mentioned at the outset, (b) legal officials act as if legal requirements create pre-emptive reasons for law subjects.

Cite as: Barbara Levenbook, *Reasons to Comply With the Law*, JOTWELL (August 12, 2019) (reviewing Noam Gur, **Legal Directives and Practical Reasons** (2019)), <https://juris.jotwell.com/reasons-to-comply-with-the-law/>.