



On the Realization of Citizen's Abidance by Law

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Abstract

The realization of citizen's abidance by law depends on the establishment of legal norm and public's acceptance on them. The setup of legal norm is the premise for citizen's abidance by law. Legal norm should have the quality of conscience law, especially must contain the spirit of tolerance in modern society so that to create legal environment. Citizen's acceptance on legal norm is necessary condition for the realization of abidance by law which must be originated by the concept of contract and the theoretical logic of keeping promise. It has to make interest as mental requirement, treat fairness and justice as internal quality, and rely on citizens that have legal consciousness.

Key words: Citizen's abidance by law; Legal norm; Ethics of abidance by law

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Law can realize its real value only when it gains general certitude and conscientious observance by the whole society. To observe the law is a normal requirement of modern legal society and as the "subject of private right", citizen's abidance by law is an important part of observing the law. How to realize citizen's abidance by law? It depends on two obligato conditions: 1. the premise: establishment of legal norm; 2. the essential condition: public's acceptance on legal norm.

1. THE ESTABLISHMENT OF LEGAL NORM

"Rule by law should contain two meanings: current laws are observed by the public; and the laws that observed by the public must be well-designed." (Aristotle, 1965, p. 199) The establishment of legal norm is the premise of citizen's abidance by law. The legal norm should carry good quality of conscience law, especially in modern society, it should contain tolerance to create legal conditions.

First, rule by conscience law. The essence of rule by law is rule by conscience law. Only conscience law deserves to be obeyed. What is conscience law? On one hand, conscience law has justical quality and must follow the principle of justice from value judgment. John Rawls has pointed out the two principles of justice: "First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: Social and economic inequalities are to be arranged so that (Rawls, 1971, p.302; revised edition, p. 47): (a) they are to be of the greatest benefit of the least-advantaged members of society, consistent with the just savings principle (the difference principle). (b) offices and positions must be open to everyone under conditions of fair equality of opportunity." Rawls calls the first principle as "Fair Equality of Opportunity" and the second "The Difference Principle" (ZHANG, 2006, pp. 499-500). On the other hand, conscience law has fair procedure including legislation process and democracy. During the process of law creation, there has to be procedures which can guarantee that people's will expressed completely. The legislation of conscience law should be a procedure with the public's participation. Fair procedure also refers to abidance by the procedure during the implementation of conscience law, respect procedural value of law and do not randomly create or abuse laws, or artificially

give pressure or other factors to break the law operation procedure. Last, conscience law, in fact, conform to regulations and logic system. This is a consideration from the objectivity of legal content and also the technical requirements of law. The expression of law should accord with logic and standard, conscience law should try to avoid technical bloomers as far as possible so that to be coordinating and unified with other legal norms within the entire legal system.

Second, legal environment. Legal environment is the supplementary condition and element for protecting the citizens' acceptance of legal norm. Legal environment is external environment except law-abiding subject. It is objective law operation and realization environment. In society with rule of law, this kind of external environment should contain modern legal tolerance which is reflected as allowing the public deciding their actions and behaviors. They are free to choose "law-abiding" or break the law" as long as he or her can bear corresponding responsibility for his or her choices. The external legal environment which citizens' abidance by law relies is a society that gives full respect to every citizen's rights and also a society that guarantees every citizen's free choices. In external legal environment, "although ordinary people have absolute moral obligation in law-abiding but they only have relative legal obligations in obeying the law." As Dworkin said "everyone have the responsibility in obeying law but when obeying local law conflicts with his or her moral responsibility, he has the right to follow his own conscience." Only in such legal environment which contains tolerance and freedom, citizens' widely acceptance of legal norm and Inner conviction can be formed.

2. ETHIC BASIS OF CITIZEN'S ABIDANCE BY LAW

Citizen's abidance by law does not only mean the pro forma abidance by law. Law needs to obtain social members' common acceptance to realize its value. Citizen's acceptance of legal norm is the necessary condition for realizing citizen's abidance by law.

First, moral obligation that derives from contracts ideas and commitments keeping is the theoretical logic of citizen's abidance by law. The most effective method for proving the theoretical logic of law-abiding ethic theory comes from the moral obligation of contracts ideas and commitments keeping. It does not derive from the authority or approval of the law making subject or presumption of original contract or natural state asserted by Hobbesian. As the subject of "private right", citizen's law-abiding moral obligation generated from such a fact: under the democratic, legal, and constitutional system, people express their own personal "will" in different degree and their willingness and basic interest

requirements are also shown by related political legal system through various kinds of means or methods. Thus, the logic of citizen's abidance by law in fact is the abidance by their own commitments and agreements. This moral obligation is absolute. In other words, people should obey the law not because the law is made by the government but because the government gets its mandatory power from people's agreement, no matter such agreement is publicly made or tacit permission or by voting. People should obey the law derives from such fact that people can get legal method or means to express their own will as they wish through democratic politics and legal procedures. In addition, his or her "willingness" of interests can be shown or reflected by the system, he or her will have the obligation to obey the law and absolute moral obligations. Here, Citizens' contract concept and keep the promise of moral obligation in the modern society based on democracy and the rule of law and constitutional system as the background.

Second, citizen's abidance by law is driven by interests. Drawing on advantages and avoid disadvantages is a kind of animal instinct. People's pursuit for interest is not only because of this instinct but also the calculation of rationality. Utilitarian theory thinks that only the abidance by law can maintain the continuous existence and effectiveness of government. By comparing with non-abidance by law, law abidance can give the most amount people happiness. Every citizen has the obligation to make good actions that can generate good result. Therefore, incontrovertible law-abidance obligation do exists.

Utilitarianism can be seen as a purposeful or consequential moral theory. The essence of Utilitarianism does not only carry its theory value but also burden its theory critique which is to "give most people the utmost happiness". On one hand, by using the result of law-abiding to prove that whether people choose the law-abiding behavior cannot give the absolute moral obligation of law-abiding. Meanwhile, Utilitarianism treats the overall utmost interest as consequence which has made it definitely at least sacrifice other people except "most people's" interest. This kind of sacrifice is unreasonable for those whose interest has been sacrificed. Specifically speaking, as an independent individual, the citizen who is the subject of law-abiding sacrifices one's happiness to fulfill other's or sacrifices one's satisfaction to meet others' content, although he or she may gain the utmost happiness, his or her action is still unacceptable for moral. It is also possible to result in extreme internal unfairness in the system under the circumstance of overall interest maximization. On the other hand, Utilitarianism's purposiveness and consequential decision which is to "bring as much as possible happiness" for "as many as people" aims at realizing the maximum interest which can be seen as a great realization of law-abiding function. From the Angle of utility or benefits to interpret citizen's

abidance by law and also provides a driven psychological needs for law-abiding ethical foundation. To obey the law can bring certain benefits for people, and coordinate relationship between man and society and to balance social interests in order to meet the people's inner psychological needs. Law can maintain social order and benefits maximum interests, therefore, people should abide by the law.

Third, the pursuit of fairness and justice is the internal quality of citizen's abidance by law. The internal quality of law-abiding ethic is also proved from people's internal feelings which in fact can also be assigned to mental requirement of law-abiding ethics. However, the mental requirement of law-abiding ethic is mainly proved from the utilitarian aspect and the internal quality of law-abiding ethic is super utilitarian which is higher moral requirement and pursuit besides interest driven layer. It is proved from the fairness and justice nature of ethics, therefore, it must be considered as one fundamental aspect of law-abiding ethics. Interest is not considered by all human actions. Except from interests, there are also a lot of other behavior standards. As previously mentioned, the core theory of the Utilitarianism that "to give as many people the utmost happiness" cannot reasonably explain the morality of sacrificing some people's interests to obtain overall interests maximization. According to Bentham criterion, although everyone is only a part in Utilitarianism and no one deserves two parts. Accordingly, everyone's interest is of the same importance and there is no one whose interest is more important than others'. Then it can be concluded that the correct thing it to maximum interests (Yao, 2006, p. 347). This is a principle of equality but obviously not for the ones that have been sacrificed. Similarly, Utilitarianism can also bring extreme unfairness inside of the system during the maximization of overall interests. Justice is shown as a kind of actual condition and also a kind of psychological feeling. As the mental requirement of law-abiding, interest is one of the foundation of law-abiding ethics. Also, the pursuit of fairness and justice is the ethic foundation of law-abiding too. In society of rule by law, which means in fair and justice legal social atmosphere, if most people have made the abidance by law, and due to the globality or cooperativity bringing to each member's maximum interests and happy emotional experience, then one will have no reason to violate law if other members actively obey the law. Or it will be imbalanced and will violate the basic principle of fairness and its equal spirit. In order to fully reflect the legal value of fairness, every social member should actively obey the law (Yao, 2006, p. 347).

Last, Law-abiding spirit. The realization of citizen's abidance by law relies on people who have law-abiding spirit. Law-abiding subject spirit has three internal elements: subject consciousness, rational consciousness, and belief consciousness. (1) Subject consciousness is the foundation of law-abiding subject spirit. Subject

consciousness is one of many basic personalities of a citizen. It is one of the most important one of a citizen. That is to say, "a person clearly understands that she/he is a citizen but not a subject of a feudal ruler; she/he is the subject of social political life and public life but not an object of no sense; she/he is an independent person who has independent consciousness and position and political rights to attend social political relationships and political procedures (ZHANG, 1999, p. 8)." Citizens who have subject consciousness must obviously have sense of participation and sense of equality. Only by this, they can be able to participate in political and public life and can realize that everyone is the subject of rights and enjoys equal rights and takes equal obligations in front of law. Only when law-abiding subject has law-abiding subject consciousness, rational consciousness, and belief consciousness, the premise of the theoretical logic that citizens' abidance by law can be established. At the same time, sense of right and obligation consciousness is indispensable. (2) Rational consciousness is the power of law-abiding subject spirit. Rational consciousness is also one of citizen's personalities. Law-abiding is built upon rationality but not non-rationality, anti-rationality, or super-rationality. Montesquieu said "the reason that makes human's rationality so great and sublime is that it can greatly realize the objects stipulated by laws should be connected with certain kind of system instead of confuses principles that should control people." (Montesquieu, 1961, p. 73). Rational consciousness is mainly reflected as the pursuit of benefit maximization and predictability of consequence. Due to the rational requirement of the subject on interests, law adjusts interests according to rights and obligations so that to encourage and lead citizens to form good orders and development prospect. Therefore, people will consciously implementing laws and laws can be effectively carried out. For this reason, rational consciousness is the internal power of law-abiding subject spirit. (3) The tidemark of law-abiding subject spirit is the belief in law. *Sensus fidei* is the decisive factor for the generation of law-abiding subject spirit. It is the utmost acknowledgement and compliance of the law-abiding subject on law. However, this belief on law is not established upon superstition and bigotry. It is built on the basis of subject consciousness and rational consciousness. Although the essence of faith is irrational, when constructing modern legal society, we would prefer to treat this kind of faith as a rational behavior which is generated from law-abiding subjects' experience of law. The law is sacred but not stands high above the masses. The faith in law is the acceptance by law but not being a slave for law. The process of rule by law must be participated by subject and the belief in law is also reflection of people's subjectivity which is also the difference between the faith in law and religious belief.

"Law should never be treated as slavery (opposite to freedom) rather than salvation." (Montesquieu, 1961). The

proper meaning of rule by law should be that to provide an external tolerant legal environment within the legal order and make sure and protect the rights of people in pursuing rights allodium and rationally and offer related remedies for such rights. The realization of citizen's abidance by law depends on the establishment of legal norm and people's acceptance of them. The construction of abidance by law ethics, as an international development model that surpassing instrumentalism, should be expected for the realization of legal society and rule by law.

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