



# Why the UK Complied with COVID-19 Lockdown Law

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## INTRODUCTION

In March 2020, the UK introduced a set of rules to ‘lockdown’ the country in response to the COVID-19 pandemic. These restrictions represented an extraordinary curtailment of normal life for the entire population, prohibiting people from leaving their homes without a reasonable excuse.<sup>1</sup> The lockdown rules constituted a key feature of governmental efforts to manage the early stages of the pandemic crisis. Their central purpose was to change people’s routine behaviours in order to contain the rate of infections, thus protecting public health and preserving the NHS’s capacity to treat the anticipated influx of patients.

Evidence suggests that the UK’s first lockdown attracted high levels of compliance.<sup>2</sup> Yet, a question remains about exactly *why* the UK public complied. Understanding people’s motivations towards compliance is important for governments when, in periods of crisis, they seek to use rules to change an entire population’s routine behaviour at considerable pace. This is particularly the case in the context of a pandemic where changes in even a small number of people’s behaviours can make a big difference to the overall number of infections.

While hitherto research has generally explored adherence to behavioural restrictions irrespective of the legal status of their underpinning rules,<sup>3</sup> our analysis focuses

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<sup>1</sup> Tom Hickman, Emma Dixon and Rachel Jones, ‘Coronavirus and Civil Liberties in the UK’ (2020) 25(2) *Judicial Review* 151

<sup>2</sup> Liam Wright, Andrew Steptoe and Daisy Fancourt, ‘Patterns of Compliance with COVID-19 Preventive Behaviours: A Latent Class Analysis of 20,000 UK Adults’ (2022) 76(3) *Journal of Epidemiology and Community Health* 247

<sup>3</sup> Eg, Liam Wright and Daisy Fancourt, ‘Do Predictors of Adherence to Pandemic Guidelines Change Over Time? A Panel Study of 22,000 UK Adults during the COVID-19 Pandemic’ (2021) 153 *Preventive Medicine* 106713; Michael Ganslmeier, Jonathan Van Parys and Tim Vlandas, ‘Compliance with the first UK COVID-19 lockdown and the compounding effects of weather’ (2022) 12 *Scientific Reports* 3821

specifically on what drove public compliance with lockdown law. Our interest in compliance with law thus offers a particular contribution to the broader research endeavour of understanding public behaviour during lockdown, specifically examining the role of law and legal culture in the UK's public responses to the pandemic.

Crucially, however, we explore 'legal' compliance *subjectively conceived*. In other words, we offer an analysis of why individuals in the UK complied with behavioural restrictions which they believed to be based in law, irrespective of whether this was correct from a strict doctrinal perspective. Methodologically, this was necessary because, although the restrictions during the first lockdown constituted a blend of hard law and soft government guidance, there was considerable room for public confusion in the UK about the legal status of these new rules.<sup>4</sup> Accordingly, to understand properly the drivers of compliance with law and the role of legal culture in that compliance, we had to allow our research participants to identify the rules they themselves believed to be legal. This, as we set out below, permitted us to examine with confidence the significance of legal culture to compliance during lockdown.

This article emerges from a broader study regarding law and compliance during COVID-19 and is based on survey data collected at a point in the pandemic (June 2020) when the UK's first lockdown had become a settled feature of everyday life. While the extreme strictness of the initial lockdown (March 2020) had eased a little, the rules still required the public to alter their pre-pandemic routines to a considerable extent (albeit with a small degree of variation between the four nations of the UK).<sup>5</sup>

Our analysis draws principally on two socio-legal bodies of research for the purposes of understanding why the UK public complied with lockdown law. First, consistent with other socio-legal research on public adherence to restrictions during the pandemic, we apply an analytical framework from criminology on why people obey low-level criminal laws.<sup>6</sup> Second, however, we supplement this criminological

4 Tom Hickman, Emma Dixon and Rachel Jones, n 4; John Sorabji and Steven Vaughan, "'This Is Not A Rule': COVID-19 in England & Wales and Criminal Justice Governance via Guidance' (2021) 12(1) *European Journal of Risk Regulation* 143; Naomi Finch et al, 'Undermining Loyalty to Legality: An Empirical Analysis of Perceptions of "Lockdown" Law and Guidance during COVID-19' (2022) *Modern Law Review* DOI: 10.1111/1468-2230.12755

5 Helen Tatlow, Emily Cameron-Blake, Sagar Grewal, Thomas Hale, Toby Phillips and Andrew Wood, *Variation in the Response to COVID-19 across the Four Nations of the United Kingdom*. Blavatnik School of Government, University of Oxford. <https://www.bsg.ox.ac.uk/research/publications/variation-response-covid-19-across-four-nations-united-kingdom> (accessed May 4th, 2020)

6 Kristina Murphy, Harley Williamson, Elise Sargeant and Molly McCarthy, 'Why People Comply with COVID-19 Social Distancing Restrictions: Self-Interest or Duty?' (2020) 53(4) *Australian & New Zealand Journal of Criminology*, 477; Christopher Reinders Folmer, Megan Brownlee, Adam Fine, Emmeke Kooistra, Malouke Kuiper, Elke Olthuis, Anne Leonore de Bruijn and Benjamin van Rooij, 'Social Distancing in America: Understanding Long-term Adherence to COVID-19 Mitigation Recommendations' (2021) 16(9) *Plos One* 39; Monica Gerber, Cristobal Cuadrado, Ana Figueiredo, Francisca Crispi, Gloria Jimenez-Moya and Valentina Andrade, 'Taking Care of Each Other: How Can We Increase Compliance with Personal Protective Measures During the COVID-19 Pandemic in Chile'

framework with some of the insights of the legal consciousness literature which shed light on the complexities of people's engagement with legality in everyday life. Additionally, we draw on the public health literature examining people's adherence to health guidance during pandemics. We examine these bodies of literature below, setting out how they informed the design of our research, before describing our findings.<sup>7</sup> We then use our findings to reflect on what lessons might be learned about the use of legal rules to shape public behaviour in times of crisis.

#### DIRECT DRIVERS OF LEGAL COMPLIANCE: NORMATIVE AND INSTRUMENTAL MOTIVATIONS

Tom Tyler, in his seminal work on why people obey the law, argued that we can observe a basic distinction between people's 'instrumental' and 'normative' motivations towards legal compliance. Instrumentally, people might obey the law to avoid detriment – the imposition of sanctions, for example.<sup>8</sup> Normatively, people might obey the law because they think it is the correct thing to do. A major and repeated finding in this field of research is that normative motivations are frequently more significant than instrumental motivations.<sup>9</sup> We explore each in turn below, setting out how we applied this distinction in our study of compliance with lockdown law.

#### **Normative Motivations: Legitimacy of law**

Within criminology, researchers have focused on the notion of law's legitimacy as a primary source of normative motivations towards compliance.<sup>10</sup> To the extent that law is regarded by the public as a legitimate form of social ordering, the legal system can function effectively without the need for coercion. Yet, while the focus on law's legitimacy is clearly essential, care must be taken to identify which particular aspect of the legal order one is attaching the notion of legitimacy to. Within criminology,

(2021) 42(5) *Political Psychology* 863; Emmeke Barbara Kooistra, Chris Reinders Folmer, Malouke Esra Kuiper, Elke Olthuis, Megan Brownlee, Adam Fine and Benjamin van Rooij, 'Mitigating COVID-19 in a Nationally Representative UK Sample: Personal Abilities and Obligation to Obey the Law Shape Compliance with Mitigation Measures'. Amsterdam Law School Research Paper No. 2020-19, General Sub-serie Research Paper No. 2020-01, Available at SSRN: <https://ssrn.com/abstract=3598221> or <http://dx.doi.org/10.2139/ssrn.3598221>

7 Details of research methods, the construction of variables and study limitations are included in a methodological appendix.

8 Tom Tyler, *Why People Obey the Law* (Princeton University Press, 2nd edn 2006)

9 Kristina Murphy, Ben Bradford and Jonathan Jackson, 'Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence?' (2016) 43(1) *Criminal Justice and Behavior* 102

10 Tom Tyler and Jonathan Jackson (2013) 'Future Challenges in the Study of Legitimacy and Criminal Justice,' in Justice Tankebe and Alison Leibling (eds) *Legitimacy and Criminal Justice* (Oxford University Press 2013)

the focus is mostly on the legitimacy of the law in general<sup>11</sup> (though sometimes on legal officials, such as the police),<sup>12</sup> and research demonstrates that a belief in the legitimacy of law in general predicts compliance with law.

Yet, an important distinction can be drawn between the legitimacy of law in general and the legitimacy of specific laws.<sup>13</sup> Both are important for understanding why people obey the law. Existing research certainly recognises the importance of personal moral assessments of particular rules for compliance.<sup>14</sup> However, it is helpful to understand such 'moral alignment'<sup>15</sup> with specific laws – whether one feels it is wrong to disobey them – as an additional and separate dimension of legal legitimacy. Legal legitimacy is best understood in relation to both the general and the particular.

The legal consciousness literature is of assistance here. Studies of law in everyday life<sup>16</sup> suggest that ordinary people's legal consciousness is frequently complex, containing internal tensions.<sup>17</sup> As Silbey, discussing the 'apparent incomparability of the general and the particular,'<sup>18</sup> notes: 'legal culture, or the schematic structure of legality, is a dialectic composed of general normative aspirations and particular grounded understandings of social relations.'<sup>19</sup> We might reasonably hypothesise that people can regard law, generally speaking, to be legitimate and so worthy of obedience but, at the same time, believe that certain specific laws lack legitimacy and so do not merit compliance. The legitimacy of law in general thus would operate as a rebuttable presumption, always subject to specific exceptions. Whereas the legitimacy of law in general concerns a felt obligation to obey law *even if* specific laws lack moral weight,<sup>20</sup> the illegitimacy of particular laws concerns the absence of a felt obligation *because* the specific rule lacks moral weight. The everyday negotiation of this inherent tension lies at the heart of legal consciousness. Especially in the context of a national crisis, when new laws are rapidly created, bringing with them extensive social, financial

11 Tom Tyler, n 8; Jonathan Jackson, Ben Bradford, Mike Hough, Andy Myhill, Paul Quinton and Tom Tyler, 'Why do people comply with the law?' (2012) 52(6) *British Journal of Criminology* 1051.

12 Eg, Justice Tankebe, 'Viewing Things Differently: The Dimensions of Public Perceptions of Police Legitimacy' (2013) 51(1) *Criminology* 103

13 To our knowledge, the only example of criminological work considering the legitimacy of particular laws (rather than law in general) is: Kristina Murphy, Tom Tyler, and Amy Curtis, 'Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?' (2009) 3 (1) *Regulation and Governance* 1

14 Tom Tyler, n 8

15 Christopher Reinders Folmer et al, n 6

16 Lynette Chua and David Engel, 'Legal Consciousness Reconsidered' (2019) 15 *Annual Review of Law and Social Science* 335; Simon Halliday, 'After Hegemony: The Varieties of Legal Consciousness Research' (2019) 28(6) *Social & Legal Studies* 859

17 Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago University Press 1998)

18 Susan Silbey 'Legal Culture and Cultures of Legality' in Hall, J., Grindstaff, L., and Lo, M.-C. (eds) *Handbook of Cultural Sociology* (Routledge 2010) 476

19 Susan Silbey, n 18

20 See Tom Tyler, n 8, 45

and health consequences, it is surely as important to examine the significance of the legitimacy of those specific laws, as well as the legitimacy of law in general. Accordingly, in our project we hypothesised not only that perceptions of the legitimacy of law in general would predict compliance, but that perceptions of the legitimacy of lockdown law specifically would do so too. And, as we elaborate later on in this article, we sought to understand the range of factors that influenced these specific legitimacy assessments.

### Instrumental Motivations

What of instrumental motivations towards legal compliance? Tyler explored whether the anticipation of peer disapproval would predict compliance with low-level criminal laws.<sup>21</sup> Although he found it not to be significant in his study, there is good reason to think that peer disapproval may have been important during the pandemic: everyone faced a common threat and there was public health messaging to the effect that everyone represented a health risk to each other. Everyone was implicated in the potential impacts of others' non-compliance. In this way, we might meaningfully frame – in this study at least – the avoidance of peer disapproval as an instrumental motivation towards compliance. The risk of peer disapproval was in this way a negative dimension of the notion that 'we are all in this together'.<sup>22</sup> Accordingly, in our study we hypothesised that those who anticipated peer disapproval for breaking lockdown law would be more likely to comply with it.

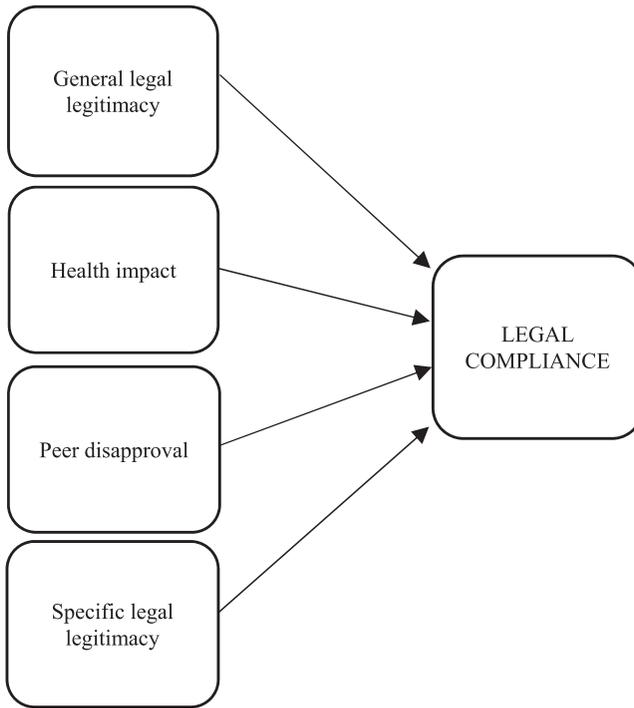
A second and obvious instrumental factor – one associated with the pandemic context, which we would not expect to feature in the criminological literature – is the desire to protect one's health. Indeed, the public health literature has explored extensively the significance of people's perceptions of the health impacts of contracting the virus for their adherence to guidelines.<sup>23</sup> Accordingly, we included this pandemic-specific instrumental motivation in our study, hypothesising that a belief that the virus would adversely affect one's health would predict compliance with lockdown law.

The above hypothesised direct drivers of legal compliance can be summarised as follows:

<sup>21</sup> Tom Tyler, n 8

<sup>22</sup> Jonathan Jackson, Chris Posch, Ben Bradford, Zoe Hobson, Arabella Kyprianides and Julia Yesberg, *The lockdown and social norms: why the UK is complying by consent rather than compulsion* | *British Politics and Policy at LSE*. Available at: <https://blogs.lse.ac.uk/politicsandpolicy/lockdown-social-norms/> (Accessed: May 9th, 2022)

<sup>23</sup> Alison Bish and Susan Michie 'Demographic and attitudinal determinants of protective behaviours during a pandemic: A review' (2010) 15(4) *British Journal of Health Psychology* 797; RK Webster, SK Brooks, LE Smith, L Woodland, S Wessely and GJ Rubin, 'How to improve adherence with quarantine: rapid review of the evidence' (2020) *Public Health*. Elsevier BV, 163; Nejc Plohl and Bojan Musil, 'Modeling Compliance with COVID-19 Prevention Guidelines: The Critical Role of Trust in Science' (2021) 26(1) *Psychology, Health and Medicine* 1



**Figure 1.** Direct Drivers of Legal Compliance.

#### INDIRECT DRIVERS: PATHWAYS TO LEGAL COMPLIANCE

The mix of normative and instrumental factors summarised in [Figure 1](#) above constitute our hypothesised main and direct drivers of legal compliance. Within criminology, however, it is common to look beyond the direct drivers and explore ‘pathways’ to legal compliance.<sup>24</sup> As Murphy notes, ‘path analysis’ allows the researcher simultaneously to explore the relationship between one or more predictor variables and one or more dependent variables.<sup>25</sup> In other words, we gain insights into additional factors that, though they may not predict legal compliance itself, predict the direct drivers of legal compliance. In our study, accordingly, the primary hypotheses about the direct drivers of legal compliance formed part of broader hypotheses about ‘pathways’ to compliance, which included indirect drivers of legal compliance – factors that were, through various routes, associated with our main drivers. Specifically, we developed hypotheses about secondary factors that would influence the following direct drivers of legal

<sup>24</sup> Kirstina Murphy, ‘Regulating More Effectively: The Relationship between Procedural Justice, Legitimacy, and Tax Non-compliance’ (2005) 32(4) *Journal of Law and Society* 562; Tom Tyler, n 8; Jonathan Jackson et al, n 11

<sup>25</sup> Kirstina Murphy, n 24

compliance: (1) the legitimacy of lockdown law specifically; and (2) the anticipation of peer disapproval for breaking lockdown law. The other direct drivers (legitimacy of law in general; impact of COVID-19 on personal health) would not, we predicted, have antecedent variables within the model.

### Pathway via the Legitimacy of Lockdown Law

As we discuss in the methodological appendix below, we frame the legitimacy of specific laws in terms of the alignment between the content of the laws and people's sense of the morality of breaking them. Criminologists, influenced by the work of the political theorist, David Beetham,<sup>26</sup> have explored the issue of people's normative alignment with law, but usually by inviting survey participants to indicate the extent to which they feel legal officials, such as the police, share their sense of right and wrong.<sup>27</sup> However, there is much to gain in moving beyond people's normative identification with legal officials. Specifically, by exploring the antecedent variables that predict the legitimacy assessments of specific laws, we are able to construct a richer picture of pathways to compliance. Such knowledge is especially important when specific legal rules have been created to achieve particular outcomes during a time of crisis. We hypothesised that five factors would feed into such legitimacy assessments (Figure 2 below):

The first such indirect driver was drawn from the criminological literature and concerns procedural justice. Much of the empirical enquiry in this field has focused on the relationship between people's perceptions of 'procedural justice' in their interactions with legal officials and their consequent assessments of the legitimacy of law.<sup>28</sup> Mostly, the focus has been on the procedural justice of policing.<sup>29</sup> Tyler's original finding<sup>30</sup> – repeated in many subsequent studies<sup>31</sup> – was that people's perceptions of

<sup>26</sup> David Beetham, *The Legitimation of Power* (Palgrave Macmillan, 2nd edn 2013)

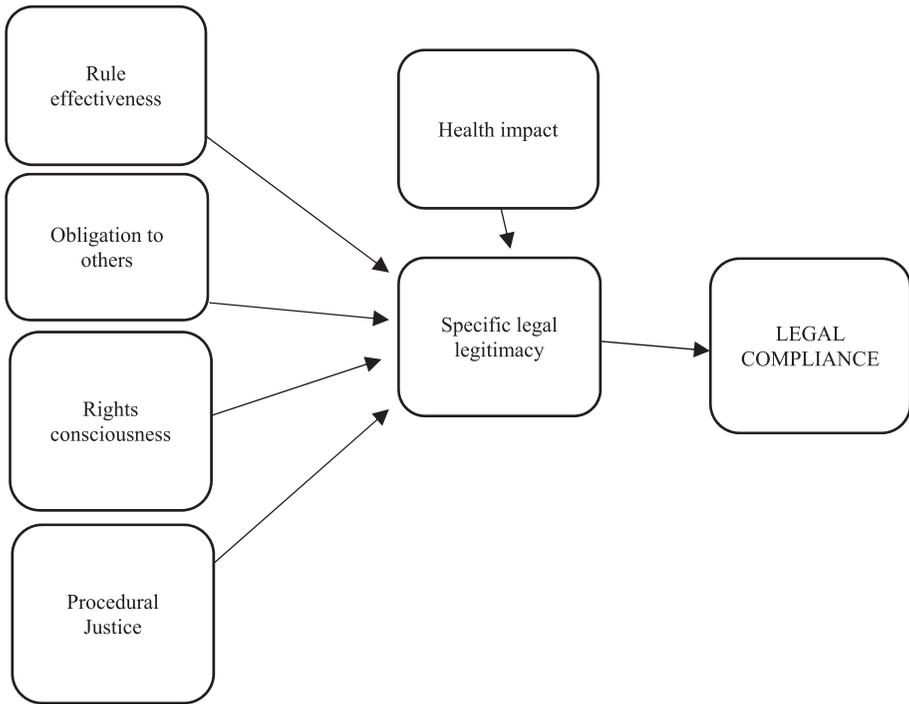
<sup>27</sup> Jonathan Jackson, n 11; Tom Tyler and Jonathan Jackson 'Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation, and engagement' (2014) 20(1) *Psychology, Public Policy and Law* 78

<sup>28</sup> Robert MacCoun, 'Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness' (2005) 1(1) *Annual Review of Law and Social Science* 171

<sup>29</sup> Tom Tyler 'Procedural justice and policing: A rush to judgment?' (2017) 13(1) *Annual Review of Law and Social Science* 29. Some procedural justice studies have applied the framework to other public officials: court officials - Jonathan Casper, Tom Tyler and Bonnie Fisher, 'Procedural Justice in Felony Cases' (1988) 22(3) *Law & Society Review* 483; prison officers - Richard Sparks and Anthony Bottoms, 'Legitimacy and Order in Prisons' (1995) 46(1) *The British Journal of Sociology* 45; regulatory officials - Kirstina Murphy, 'Regulating More Effectively: The Relationship between Procedural Justice, Legitimacy, and Tax non-compliance' (2005) 32(4) *Journal of Law and Society* 562 and Kristina Murphy, 'Turning Defiance into Compliance with Procedural Justice: Understanding Reactions to Regulatory Encounters through Motivational Posturing' (2016) 10(1) *Regulation and Governance* 93.

<sup>30</sup> Tom Tyler, n 8

<sup>31</sup> Glenn Walters and Colin Bolger 'Procedural Justice Perceptions, Legitimacy Beliefs, and Compliance with the Law: A Meta-Analysis' (2019) 15(3) *Journal of Experimental Criminology* 341



**Figure 2.** Pathway to Compliance via Legitimacy of Lockdown Law Specifically.

procedural justice in their encounters with police enhance those individuals' perceptions of the legitimacy of law, in turn promoting their compliance with law.

Despite the importance of the research on procedural justice, the concept is quite narrowly framed: it focuses largely on personal encounters between individuals and officials.<sup>32</sup> Indeed, research that has explored the potential significance of procedural justice for adherence to COVID-19 pandemic guidelines has focused similarly on people's anticipation of how they would be treated by officials, such as the police,

<sup>32</sup> Where the insights of procedural justice research have been applied to settings that do not involve close personal interactions akin to encounters with the police, the focus is still on individualised encounters of some kind. See, eg, Kirstina Murphy, 'Regulating more effectively: The relationship between procedural justice, legitimacy, and tax non-compliance' (2005) 32(4) *Journal of Law and Society* 562 and Kristina Murphy, Ben Bradford and Jonathan Jackson, 'Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence?' (2016) 43(1) *Criminal Justice and Behavior* 102 (the imposition of individualised tax obligations); Naomi Creutzfeldt and Ben Bradford, 'Dispute Resolution Outside of Courts: Procedural Justice and Decision Acceptance Among Users of Ombuds Services in the UK' (2016) 50(4) *Law and Society Review* 985 (the resolution of individualised disputes); and Tom Tyler and Peter Degoey, 'Collective Restraint in Social Dilemmas: Procedural Justice and Social Identification Effects on Supports for Authorities' (1995) 69(3) *Journal of Personality and Social Psychology* 482 (imagined participation in an open meeting with public authorities).

enforcing the restrictions.<sup>33</sup> Such insights are important. Yet, it is possible to conceive of procedural justice at a different scale, it is suggested. Within public law, for example, the notion of procedural justice ('procedural fairness') is framed expansively, encompassing a very broad range of decision-making tasks that have relevance for people.<sup>34</sup> The notion of a personal encounter is certainly part of the public law discourse but is by no means all of it: procedural fairness embraces remote relations between citizen and state, including the development of policy where those affected by such decisions never encounter the officials making the decisions.

Significantly, despite the separate scales of citizen-state relations at which procedural justice is framed within criminology and public law, there are important commonalities in how the idea is understood. Common to both is a concern with the quality of citizen participation in the decision-making process. Thus, the legal maxim *audi alteram partem* ('listen to the other side'), which forms a key element of the public law notion of procedural fairness, corresponds neatly to Tyler's notion of 'voice' as a constituent aspect of procedural justice.<sup>35</sup> Indeed, King and Murphy,<sup>36</sup> in one of the few studies of procedural justice beyond the interpersonal context, have shown that people's perceptions of the quality of community consultation can be significant for their acceptance of public decisions affecting them – in that case, the construction of a desalination plant. Equally, the importance within public law of honesty and good faith in public decision-making<sup>37</sup> has a clear affinity to notions of trustworthiness and the importance of treating people with dignity and respect within criminological treatments of procedural justice.<sup>38</sup> Likewise, in public law there is a concern with the rationality of the deliberative processes that precede a decision,<sup>39</sup> which is consistent with the notion within criminological research that decision-makers have the right information to make informed

<sup>33</sup> Kristina Murphy, Harley Williamson, Elise Sargeant and Molly McCarthy, 'Why People Comply with COVID-19 Social Distancing Restrictions: Self-Interest or Duty?' (2020) 53(4) *Australian & New Zealand Journal of Criminology* 477; Christopher Reinders Folmer, Megan Brownlee, Adam Fine, Emmeke Kooistra, Malouke Kuiper, Elke Olthuis, Anne Leonore de Bruijn and Benjamin van Rooij, 'Social Distancing in America: Understanding long-term adherence to COVID-19 mitigation recommendations' (2021) 16(9) *Plos One* 39

<sup>34</sup> Denis Galligan, *Due Process and Fair Procedures* (Oxford University Press 1996); TRS Allan 'Procedural Fairness and the Duty of Respect' (1998) 18(3) *Oxford Journal of Legal Studies* 497

<sup>35</sup> Tom Tyler, n 8, 127

<sup>36</sup> Tanya King and Kristina Murphy, 'Procedural Justice and Australian Environment: The Case of the Wonthaggi Water Desalination Plant' (2009) 4(2) *Public Policy*, 105

<sup>37</sup> Jeffrey Jowell and Anthony Lester, 'Beyond Wednesbury: Substantive principles of administrative law' (1988) 14(2) *Commonwealth Law Bulletin* 858

<sup>38</sup> Tom Tyler and Yuen Huo, *Trust in the Law: Encouraging Cooperation with the Police and Courts* (Russell Sage Foundation 2002)

<sup>39</sup> Peter Cane, 'Records, Reasons and Rationality in Judicial Control of Administrative Power: England, the US and Australia' (2015) 48 *Israel Law Review* 309; Jerry Mashaw, *Reasoned Administration and Democratic Legitimacy: How Administrative Law Supports Democratic Government* (Cambridge University Press 2018)

decisions, such that they display neutrality towards the those affected by their decisions.<sup>40</sup>

At this enlarged scale embraced by public law discourse, whilst citizen-state relations may be far more remote, the exploration of procedural justice may be more meaningful, at least in the UK in the context of the pandemic where proportionately few individuals encountered the police. Our study thus offered an opportunity to explore whether the insights drawn from criminology's interpersonal framing of procedural justice might also apply in a much more remote context: whether the significance of procedural justice for legal compliance can extend to the law-making process. There were good reasons to hypothesise that they would. Governmental responses to the pandemic constituted an exceptional moment of law creation. Although the process of creating lockdown law represented a remote relation between governments and individuals, lockdown law itself was direct and dramatic in its effect on people's lives. During a time of national emergency, the entire population, with heightened attention, observed the development of rules that required radical and immediate changes to their lives. The pandemic was thus a context where law creation, despite happening remotely, is likely to have felt unusually and deeply personal. Accordingly, in our study we hypothesised that people's assessments of the procedural justice of the lockdown law-making process would predict their assessments of the legitimacy of those laws.

The second indirect driver concerned the perceived effectiveness of the rules. The significance of the perceived competence of authorities in handling health crises for whether people adhere to health guidance has been explored in the public health literature. The greater the confidence people have in authorities' effectiveness, the more likely they are to adhere to guidelines, it has been found.<sup>41</sup> Although this research points to a very important issue, a potential limitation is that participants tend to be asked for their assessments of the *general* competence of authorities in the context of a health crisis. Given our specific focus on compliance with legal rules as one part of governments' broader handling of the pandemic, we felt it was appropriate to employ a narrower framing of effectiveness, one that focused on the rules themselves.<sup>42</sup> Accordingly, we asked our survey participants for their assessments of

40 Kristina Murphy, Ben Bradford and Jonathan Jackson, 'Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence?' (2016) 43(1) *Criminal Justice and Behavior* 102, 109

41 James Rubin, Richard Amlot, Lisa Page and Simon Wessely, 'Public Perceptions, Anxiety and Behaviour Change in relation to the Swine Flu Outbreak: Cross Sectional Telephone Survey' (2009) 339 *British Medical Journal*, 1; C Tan and C Wong, 'An Outbreak of the Severe Acute Respiratory Syndrome: Predictors of Health Behaviors and Effect of Community Prevention Measures in Hong Kong, China' (2003) 93(11) *American Journal of Public Health* 1887

42 Some public health studies have similarly explored people's assessments of the effectiveness of rules themselves: Cory Clark, Andres Davila, Maxime Regis and Sascha Kraus, 'Predictors of COVID-19 voluntary compliance behaviors: An International Investigation' (2020) 2 *Global Transitions*, 76; Irina Georgieva, Tella Lantta, Jakub Lickiewicz, Jaroslav Pekara, Sofia Wikman, Marina Losevica, Bevinahalli Najegowda Raveesh, Adriana Mihai and Peter Lepping, 'Perceived Effectiveness, Restrictiveness and Compliance with Containment Measures against the COVID-9 Pandemic: An International

how effective the rules were in lowering the risk of virus transmission. We hypothesised that their views on the rules' fitness for purpose would impact on their assessments of the rules' legitimacy: those who believed a rule to be effective, would be more likely, we predicted, to regard the rule as legitimate.

The third indirect driver concerned people's rights consciousness. The study of legal consciousness has revealed an essential legal pluralism that characterises everyday engagement with legality<sup>43</sup> - what Santos describes as 'interlegality'.<sup>44</sup> In addition to the formal state legal system, ordinary people employ senses of legality that stand apart from - or above - state law,<sup>45</sup> including the notion of basic rights.<sup>46</sup> Perceptions of the legitimacy of state laws can be undermined by these alternative senses of legality.<sup>47</sup> There was some evidence of this in relation to lockdown by the time of our survey in June 2020. Sceptical commentary had emerged in the public domain about the excessive nature of lockdown restrictions, engaging in discourses of basic rights.<sup>48</sup> Moreover, in relation to previous pandemics, research had pointed to the significance of rights consciousness for how both the public and public officials might respond to lockdown restrictions.<sup>49</sup> Accordingly, we explored the issue of rights consciousness for perceptions of the legitimacy of lockdown law. We hypothesised that those who regarded lockdown laws as an unacceptable breach of their basic rights would be less likely to regard those laws as legitimate.

The fourth indirect driver concerned people's sense of social obligation towards each other. Above, we noted that, during the early stages of the pandemic, the motif 'we are all in this together' had a negative dimension, evoking the risk of peer disapproval, should one break the rules. Yet, the sense of collectivity during lockdown was somewhat Janus-faced: at the same time, it has a positive aspect too, leading to feelings of solidarity towards each other as we all faced the common challenge. As such, we hypothesised that this normative motivation - to fulfil a sense of social obligation towards others - would be associated with legitimacy assessments of lockdown law. In other words, we predicted that those

Comparative Study in 11 Countries', (2021) 18 *International Journal of Environmental Research and Public Health* 3806

<sup>43</sup> Marc Hertogh, 'A "European Conception of Legal Consciousness": Rediscovering Eugen Ehrlich' (2004) 31(4) *Journal of Law and Society* 457; Marc Hertogh, *Nobody's Law: Legal Consciousness and Legal Alienation in Everyday Life* (Palgrave Macmillan 2018)

<sup>44</sup> Boaventura de Sousa Santos 'Law: A Map of Misreading. Toward a Postmodern Conception of Law' (1987) 14(3) *Journal of Law and Society* 279

<sup>45</sup> Brian Tamanaha, *A General Jurisprudence of Law and Society* (Oxford University Press 2001)

<sup>46</sup> David Engel and Frank Munger *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disability* (University of Chicago Press 2003)

<sup>47</sup> Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (University of Chicago Press 1994); Simon Halliday and Bronwen Morgan 'I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination' (2013) 66 *Current Legal Problems* 1

<sup>48</sup> Simon Halliday, Jed Meers and Joe Tomlinson, 'Rights and Solidarity during COVID-19' in D Cowan and A Mumford (eds) *Pandemic Legalities* (Bristol University Press 2021)

<sup>49</sup> Lesley Jacobs, 'Rights and Quarantine During the SARS Global Health Crisis: Differentiated Legal Consciousness in Hong Kong, Shanghai, and Toronto' (2007) 41(3) *Law & Society Review* 511

who felt an obligation to others would be more likely to regard lockdown law as legitimate.

The fifth indirect driver concerned people's sense of how seriously the coronavirus would affect their own health. Whilst, above, we suggested that people's perceptions of the impact of catching the coronavirus on their health would be a direct driver of compliance with lockdown law, there is evidence in the socio-legal research on adherence to pandemic restrictions that people's health risk perceptions may also be associated with legitimacy perceptions.<sup>50</sup> Accordingly, we hypothesised that, in addition to being a direct driver, the variable regarding 'health impact' would also have an indirect association with legal compliance: people who believed COVID-19 to be a serious risk to their health would be more likely to regard lockdown law as legitimate.

### Pathway via Peer Disapproval

Our second pathway to legal compliance is via the anticipation of peer disapproval in the event of breaking lockdown law. Here, we hypothesised that there would be three antecedent variables (Figure 3 below):

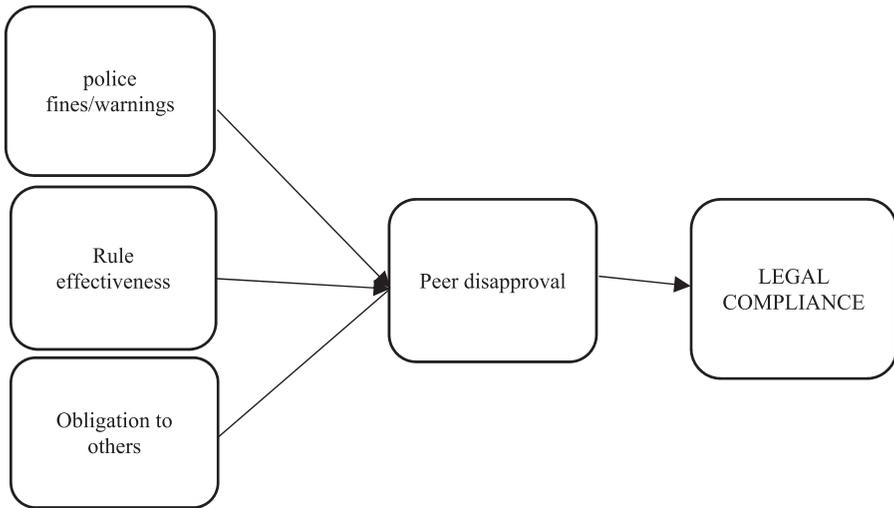
The first indirect driver here concerned the anticipation of police warnings or fines for breaking lockdown laws. The prospect of formal sanctions and people's desire to avoid them is associated with the potentially deterrent effects of the criminal justice system.<sup>51</sup> Certainly, during the UK's first lockdown, breach of the laws was punishable by fines, with the police granted powers of enforcement. However, research evidence suggests that the prospect of punishment is generally not a key driver of compliance with low-level criminal laws.<sup>52</sup> Equally, in the specific context of the COVID-19 pandemic, studies have found the prospect of the formal enforcement not to be significant for compliance.<sup>53</sup> Accordingly, in our study we did *not* hypothesise that the anticipation of a police warning or fine would be a direct driver of compliance. Nonetheless, we predicted that it could have an *indirect* effect on compliance, mediated through the anticipation of peer disapproval. In the context of the pandemic, we suggest, police punishment may have acted as a source of social stigma. In this way, the anticipation of formal sanctioning may be associated with the anticipation of informal sanctioning by way of peer disapproval. Thus, we hypothesised that those who believed that

50 Kristina Murphy, Harley Williamson, Elise Sargeant and Molly McCarthy, 'Why People Comply with COVID-19 Social Distancing Restrictions: Self-Interest or Duty?' (2020) 53(4) *Australian & New Zealand Journal of Criminology* 477

51 Mike Hough, Jonathan Jackson, Ben Bradford, Andy Myhill and Paul Quinton, 'Procedural Justice, Trust, and Institutional Legitimacy' (2010) 4(3) *Policing: A Journal of Policy and Practice* 203

52 Jonathan Jackson, et al, n 11

53 Kristina Murphy et al, n 6; Christopher Reinders Folmer et al, n 6. The one exception, to our knowledge, is: Monica Gerber et al, n 6. Gerber *et al*, however, note that, prior to the pandemic, Chile had gone through a recent period of political unrest with strong police repression. This may explain this anomalous finding.



**Figure 3.** Pathway to Compliance via Peer Disapproval.

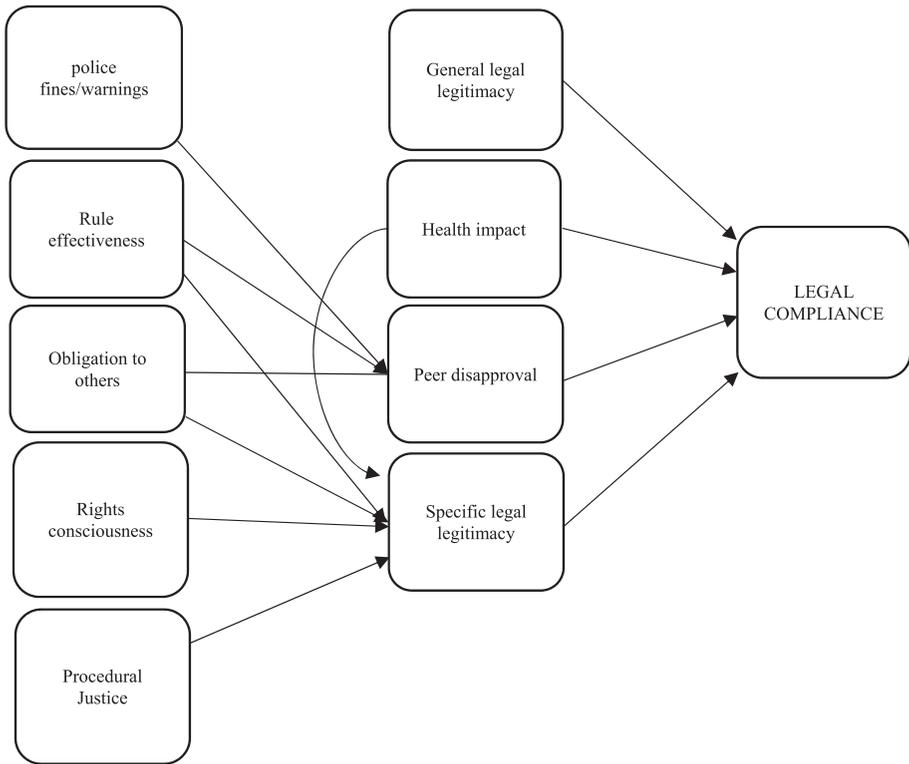
lockdown law-breaking would attract police warnings or fines were more likely to anticipate such sanctioning would attract peer disapproval.

The second and third indirect drivers comprised two variables already discussed above: ‘obligation to others’ and ‘rule effectiveness’. These would, we predicted, also have an indirect influence on the anticipation of peer disapproval. We hypothesised that those who felt a social obligation to others, and those believed that lockdown rules were effective in preventing virus transmission would be more likely to anticipate peer disapproval for breaking lockdown law.

An overview of the whole predictive model, including all pathways to compliance, is set out below in [Figure 4](#):

## FINDINGS AND DISCUSSION

As we can see from [Figure 5](#) below, three of the four hypothesised direct drivers of legal compliance were confirmed: to be law abiding (‘legitimacy of law in general’), to be morally correct (‘legitimacy of lockdown law specifically’), and to avoid peer disapproval. The ‘health impact’ variable was not found to have a statistically significant direct association with legal compliance. As for the pathway to compliance via the legitimacy of lockdown law, this hypothesised pathway, with the exception of ‘procedural justice’, was confirmed. Procedural justice was not found to have a statistically significant association with perceptions of the specific legitimacy of lockdown law. The hypothesised pathway to compliance via ‘peer disapproval’ was fully confirmed. Each of the hypothesised antecedent variables were found to be significant predictors.



**Figure 4.** Hypothesised Pathways to Compliance with Lockdown Law.

What should we make of the above findings, and what lessons might be learned about the use of legal rules to change behaviour at pace in moments of national crisis? Research on why people obey law has generally stressed the importance of normative motivations towards legal compliance, in contrast to the idea that citizens are largely driven by instrumental self-interested calculation.<sup>54</sup> Our study findings accord with this insight. Even in the context of a pandemic, when legal rules were introduced to protect people's health, motivations towards compliance were dominated by normative concerns. Indeed, it is striking that our prediction that personal health concerns would be a direct driver of legal compliance was not confirmed (though, as we noted above, it had an indirect effect).

The dominance of normativity within our analysis of legal compliance is consistent with other socio-legal studies of public behaviour during the pandemic.<sup>55</sup> Yet, significantly, we found that one of the normative motivations was fidelity to law itself: the UK

<sup>54</sup> Mike Hough, Jonathan Jackson, Ben Bradford, Andy Myhill and Paul Quinton, 'Procedural Justice, Trust, and Institutional Legitimacy' (2010) 4(3) *Policing: A Journal of Policy and Practice* 203

<sup>55</sup> Kristina Murphy et al, n 6; Christopher Reinders Folmer et al, n 6; Monica Gerber et al, n 6.

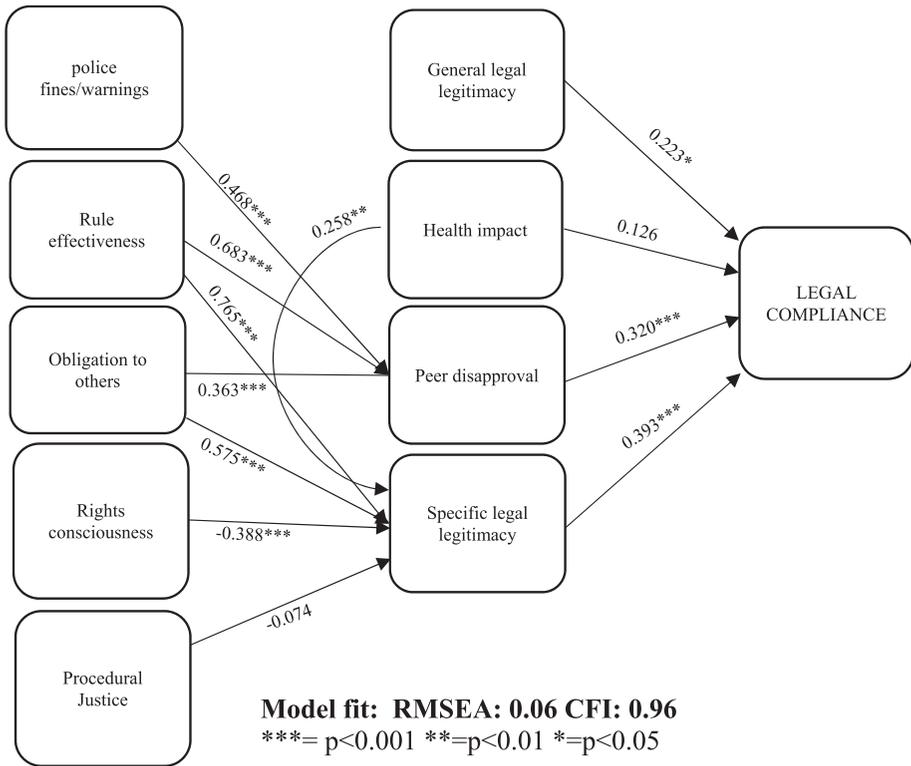


Figure 5. Pathways to Compliance with Lockdown Law Findings.

public, it seems, in part at least, obeyed lockdown law simply because it was law. This is an important finding. In other research, people’s felt obligation to law was found not to be significant.<sup>56</sup> Yet, in that study the focus was not distinctly on compliance with restrictions believed to be law. It may be, then, that restrictions were not necessarily viewed by participants as legal rules and so fidelity to law may have been a less relevant motivation. By way of contrast, our employment of a subjective conception of legal compliance permitted us to interrogate the relationship between legal culture and legal compliance more intimately. Others have suggested that the function of the law in the UK during the pandemic was simply expressive: to signal to the nation that it needed to take social distancing seriously.<sup>57</sup> Yet, our study suggests that the UK governments’ use of law tapped into the ‘reservoir of loyalty’ that the legal order enjoys within society, as Tyler puts it.<sup>58</sup> The use of law (or people’s perceptions of the use of law, at

56 Christopher Reinders Folmer, et al, n 6

57 Jonathan Jackson, Chris Posch, Ben Bradford, Zoe Hobson, Arabella Kyprianides and Julia Yesberg, *The lockdown and social norms: why the UK is complying by consent rather than compulsion* | *British Politics and Policy at LSE*. Available at: <https://blogs.lse.ac.uk/politicsandpolicy/lockdown-social-norms/> (Accessed: May 9th, 2022)

58 Tom Tyler, n 8

least) thus lent some legitimacy to those aspects of pandemic policy. As we have discussed at length elsewhere, this raises the importance of governmental clarity and transparency about which rules are based in law, and which are merely guidance.<sup>59</sup>

At the same time, however, our study confirms that legal legitimacy is not unconditional. Our findings reveal the internal tensions of everyday legal consciousness. As well as the legitimacy of law in general, the specific legitimacy of lockdown law mattered too. Thus, while governments may harness the public's general commitment to law abidingness to shape their behaviour, care must be taken in doing so: fidelity to law in general can be undermined by specific assessments of the legitimacy of particular legal rules. Understanding this is centrally important for the development of policy, we suggest.

Our findings revealed four factors that influenced the legitimacy assessments of specific legal rules. First, unsurprisingly perhaps in the context of the pandemic, people's sense of their personal health vulnerability to the virus was associated with their assessments of the legitimacy of lockdown laws. Those who believed the virus would seriously affect their own health were more likely to view lockdown laws as legitimate.

However, second, the legitimacy of lockdown restrictions was also contingent on them being perceived as fit for purpose. The rules restricting behaviour during the pandemic had, perhaps, an especially clear ambition when compared to the general law. Moreover, at the time, the UK government made much of the value of citizens adopting a 'common sense' approach to the restrictions.<sup>60</sup> The nation, it seems, took the government at its word. Perceptions of the effectiveness of rules in preventing virus transmission were significant for assessments of the rules' legitimacy (as well as people's anticipation of peer disapproval for breaking the rules). A key finding of our study, explored elsewhere,<sup>61</sup> is that, during the pandemic, the UK public were capable of distinguishing between the requirements of a rule and its underlying purpose, engaging in practices of 'creative non-compliance' whereby the spirit of the law (its purpose) mattered more than the letter (a rule's specific requirement). Governments, therefore, must pay attention to the common sense of the rules they expect the public to follow. Whilst the public may be largely in alignment with the spirit of the laws, disconnections between the spirit and the letter of the law may cause people to lose faith. Educating and persuading the public about why specific rules make a difference seems essential. Yet, the question of exactly *how* governments should educate and persuade seems challenging. Our finding that procedural justice was not significantly associated with assessments of the legitimacy of lockdown law is striking. Our construct of 'procedural justice'

<sup>59</sup> Naomi Finch et al, 'Undermining Loyalty to Legality: An Empirical Analysis of Perceptions of "Lockdown" Law and Guidance during COVID-19' (2022) *Modern Law Review* DOI: 10.1111/1468-2230.12755

<sup>60</sup> Jed Meers, Simon Halliday and Joe Tomlinson "Creative Non-Compliance": Complying with the "spirit of the law" not the "letter of the law" under the Covid-19 lockdown restrictions' (2021) *Deviant Behavior* DOI: 10.1080/01639625.2021.2014286

<sup>61</sup> above, n 60

contained a measure regarding people's beliefs about how much governments were paying attention to science. Even after testing the potential significance of this variable in isolation, it still proved non-significant.<sup>62</sup> This raises the important question of how people acquired their beliefs about the effectiveness of lockdown rules. Perhaps governmental fidelity to the science of virus transmission was not a key issue for the public. Or perhaps the public were sceptical or confused about the scientific evidence, thus forced to take a 'common sense' approach to science too. The question of the basis of public perceptions of rule effectiveness is an issue on which further research would be welcome.

Third, we can observe the significance of rights consciousness to assessments of the legitimacy of lockdown law.<sup>63</sup> Notwithstanding the widescale public commitment to law abidingness, specific laws were nonetheless regarded as an unacceptable interference with basic rights by a fairly sizeable minority. In the context of a pandemic, given the extreme curtailment of normal life for people, it is, perhaps, inevitable that the rights consciousness of some people is offended. Yet, we know very little about who such people are, and about why they felt lockdown law represented an unacceptable violation of basic rights. Given that our study suggests that such rights consciousness undermined assessments of the legitimacy of lockdown law, it is important we learn more. As with the question of the effectiveness of lockdown rules, governments face a challenge of persuading people about the acceptability of rights violations if they wish to maximise compliance with such laws.

Fourth, we can observe that social norms – people's sense of obligation to others – also mattered for legitimacy assessments of specific laws. The efforts governments made to encourage a social norm of community adherence to lockdown restrictions seems, then, to have been important.

Our finding that perceptions of the procedural justice of the law creation process were not significantly associated with assessments of the legitimacy of lockdown laws is also worthy of comment. Such may be deemed, at least at first glance (and sceptically speaking), somewhat encouraging for lawmakers. Much has been made of the failures of the law-making process from a constitutional perspective.<sup>64</sup> Such failures may fail to connect with public sensibilities. Yet, more pertinently, the pandemic has been replete with public outrage at the behaviour of key public figures. Our survey took place long prior to the 'Partygate' scandal of 2022,<sup>65</sup> but not before a number of high-profile officials (the Chief Medical Officer for Scotland; a prominent member of the UK Government's scientific advisory group; and most notoriously, Dominic

62 This involved disaggregating the four elements of the procedural justice construct and hypothesising that each in isolation predicted legitimacy assessments of lockdown law specifically.

63 For a full discussion of our findings on rights consciousness see Simon Halliday *et al*, 'Law, Lockdown and Liberty: Rights Consciousness in an Age of Proportionality', *forthcoming* (under review).

64 Naomi Finch *et al*, 'Undermining Loyalty to Legality: An Empirical Analysis of Perceptions of "Lockdown" Law and Guidance during COVID-19' (2022) *Modern Law Review* DOI: 10.1111/1468-2230.12755

65 L Kuenssberg, 'Partygate: No. 10 Braced for Next Big Twists in Saga' <<https://www.bbc.co.uk/news/uk-politics-60908978>> accessed 24th May 2022

Cummings, the UK Prime Minister's senior aide) had been accused of breaching lockdown restrictions, with two of the three resigning. However, our hypothesis that perceptions of procedural failings would dent public assessments of lockdown laws' legitimacy was not confirmed. Nonetheless, our findings, we must stress, do not prove the negative: that perceptions of procedural justice in law making do *not* matter. Rather, we must remain agnostic on this question for the time being. It is very much an under-researched issue: our study, as far as we are aware, is the first to explore this. It may be that the dynamic between perceptions of procedural fairness and a sense of law's legitimacy is contingent upon some form of interpersonal interaction, as per existing criminological research. Alternatively, it could be that the law-making context disrupts the dynamic between procedural justice and legal compliance: perhaps there are different mediating variables or separate pathways to compliance, other than through perceptions of legitimacy. Ultimately, further exploration is required.

Our final point of discussion relates to the importance of social norms to legal compliance. Not only, as noted above, did the sense of obligation to each other strengthen public assessments of the legitimacy of lockdown law, it also operated to raise the anticipation of peer disapproval, another direct driver of legal compliance. Likewise, the policing of lockdown mattered, not because fixed penalty notices had a deterrent effect in themselves, but rather because the prospect of police action had a stigmatising effect, raising the prospect of peer disapproval. Peer disapproval was the real 'punishment' that seemed to matter during the first lockdown. We might draw the conclusion, then, that the public messaging to the effect that 'we are all in this together' was not just a statement of support for the country in a moment of crisis but was also an important mechanism for encouraging legal compliance.

## CONCLUSION

The creation of social distancing restrictions, underpinned by legal obligation, was a key regulatory tool for the UK during the COVID-19 pandemic. Whilst there was undoubtedly a degree of uncertainty on the part of the public about what legal requirements applied to them, and a degree of mismatch between public perception and doctrinal reality, it is clear that law was integral to how the UK responded to the early months of the pandemic. Understanding pathways to legal compliance is thus important for governments, particularly in the context of a pandemic where changes in a small number of people's behaviour can make a big difference to the rate of infections.

This article has argued that concerns with the legitimacy of law mattered. However, we have drawn a distinction between the legitimacy of law in general and the legitimacy of lockdown laws specifically. Consistent with legal consciousness theory, our findings reveal the ordinary tensions between these legitimacy concerns. While the UK governments, in order to trigger behavioural change, were able to harness, to some extent, the

public's general commitment to legality, such general sentiments towards the importance of law abidingness remained vulnerable to countervailing pressures based on perceptions of the illegitimacy of lockdown law specifically. People were more likely to assess lockdown law as illegitimate if they felt the rules were not fit for purpose, or if they went too far in violating basic rights. People were less likely to assess lockdown law as illegitimate if they felt a social obligation to others or had a sense of personal health vulnerability to the virus. Peer disapproval emerged as a major direct driver of legal compliance too, supported in turn by the indirect influence of police action.

## METHODOLOGICAL APPENDIX

This article emerges from a broader project regarding law and compliance during COVID-19. The research project included a qualitative work package, involving online discussion boards (n = 102) and semi-structured video-call interviews (n = 47), as well as a quantitative work package, comprising a 'panel study'<sup>66</sup> of around 1600 UK residents. The panel study had three 'waves', surveying participants at three different stages of the pandemic. A professional panel provider, *YouGov*,<sup>67</sup> oversaw our survey participants' initial selection, randomly selecting them from their sample base of over 185,000 adults. The sample was weighted to be representative of the adult population. The survey was conducted by way of online questionnaire. In the path analysis we controlled for gender and age, both of which have been shown to be significant in studies of legal compliance generally,<sup>68</sup> and pandemic restrictions adherence specifically.<sup>69</sup>

### **Variable Construction**

It is important to be transparent about how the theoretical concepts discussed in this article were translated into the variables that were used in the path analysis. Whilst the construction of the variables was theory-driven, it was also informed by a preliminary multi-variate logistic regression analysis. This analysis helped us determine how best to represent the data in the pathway model. As we set out below, for most of the variables they were best framed in binary terms.

### ***Dependent variable: legal compliance***

Survey participants were presented with a list of twelve activities. This list of activities reflected the slight variation in restrictions across the four nations of the UK (England,

<sup>66</sup> Panel studies are a form of longitudinal research whereby data are collected from a specific group of research participants at various points over a period of time.

<sup>67</sup> <https://yougov.co.uk>

<sup>68</sup> Eg, Tom Tyler, n 8

<sup>69</sup> Eg, Christopher Reinders Folmer et al, n 6

**Table 1.** List of Restricted Activities.

Activity	Proportion believing activity to be legally prohibited
Intentionally come within 2 metres of anyone outside who was not a member your household	82%
Meet up socially outside in a group of more than 8 people	73%
Visit family or friends inside their homes, or receiving family or friends into your home (as opposed to the garden)	71%
Stay away from your home overnight (except for essential purposes, such as work)	67%
Share food or eating utensils with someone from outside your household	67%
Visit shops with someone from outside your household	59%
Meet up socially outside in a group of more than 6 people	56%
Meet up socially outside in a group of more than 6 people (unless they were all from your household)	48%
Meet up socially outside with people from more than one household at the same time	43%
Use someone's toilet when visiting them, or allowed a social visitor to use your toilet	41%
Meet up socially outside with people from more than one household within a single day (albeit at separate times)	34%
Travel beyond your local area (except for essential purpose, such as to obtain supplies or medical help that were not available locally)	20%

Northern Ireland, Scotland, Wales) and so were not necessarily restricted in all parts of the UK. However, recognising that there was room for confusion amongst the UK public about which activities were restricted in which part of the UK, and about the legal status of such restrictions, we asked our participants to indicate their understanding of the legality of the twelve activities in relation to where they lived: whether they believed them to be legally allowed, legally allowed but advised against by government, or legally prohibited. The twelve activities are listed below in [Table 1](#), ordered according to the proportion of participants who believed the activity to be legally prohibited in their part of the UK.

Participants were then asked to indicate whether they had engaged in the above activities since lockdown began. From these data, we derived a binary dependent variable, indicating whether participants had or had not complied with lockdown law.<sup>70</sup> If a

<sup>70</sup> We did not use a scaled variable, indicating the extent to which participants were non-compliant. The distribution of the dependent variable data was heavily skewed towards compliance: fifty-four per cent of participants were coded as compliant, while 35 per cent were coded as non-compliant (ten per cent were excluded from the analysis as those participants either did not believe any of the activities were legally prohibited or had missing answers for all 12 activities).

survey participant had engaged in at least one activity which they believed to be legally prohibited where they lived, they were coded as non-compliant. Those who indicated that they had not engaged at all in any of activities listed were asked whether they had ever ‘bent’ the rules in question. Based on findings in our qualitative data analysis,<sup>71</sup> we coded the bending of rules as breaking rules. Thus, those who indicated having ‘bent’ a rule which they believed to be a legal rule applying to them, were also coded as non-compliant.<sup>72</sup> But if a participant had neither broken nor bent any of the rules which they believed to be legal and applying to them, they were coded as legally compliant.

### ***Independent variables***

*Legitimacy of law in general.* There is now quite a broad range of factors that have been associated with the construct of the legitimacy of law in general.<sup>73</sup> As the research field has developed, the concept has expanded in various ways, with most scholars regarding it as multi-dimensional. There is also sometimes a degree of overlap between how the concepts of legitimacy and procedural justice (a key predictor variable) are operationalised in analyses.<sup>74</sup> Consequently, some have argued for the value of analysing separately the various dimensions of legitimacy, particularly in relation to different outcomes, such as legal compliance, co-operation with legal authorities, or broader engagement with them.<sup>75</sup>

In light of the above, we operationalised the concept of the legitimacy of law in general as the perceived obligation to obey law. Feeling a general obligation to obey is, in other words, evidence of research participants having conferred legitimacy on the legal order. In Beetham’s terms, it is the manifestation of a normative alignment between society and the general legal order as an aspect of state power: ‘to the extent that people acknowledge power as rightful, as validly acquired and properly exercised, they will feel a corresponding obligation to obey.’<sup>76</sup> Consistent with this conception of general legal legitimacy, we replicated Tyler’s original suite of questions regarding the felt obligation to obey law,<sup>77</sup> asking participants to indicate the extent to which they agreed with the statements in [Table 2](#) below.

71 Jed Meers, Simon Halliday and Joe Tomlinson ‘“Creative Non-Compliance”: Complying with the “spirit of the law” not the “letter of the law” under the Covid-19 lockdown restrictions’ (2021) *Deviant Behavior* DOI: 10.1080/01639625.2021.2014286

72 The proportion of participants ‘bending’ rules ranged from 2 per cent (‘meet up socially outside in a group of more than 8 people’) to 8 per cent (‘not intentionally come within 2 metres of someone outside who is not a member of your household’).

73 Glenn Walters and Colin Bolger ‘Procedural justice perceptions, legitimacy beliefs, and compliance with the law: a meta-analysis,’ (2019) 15(3) *Journal of Experimental Criminology* 341

74 Kristina Murphy, Tom Tyler and Amy Curtis, ‘Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?’ (2009) 3(1) *Regulation and Governance* 1, 3

75 Tom Tyler and Jonathan Jackson ‘Popular legitimacy and the exercise of legal authority: Motivating compliance, cooperation, and engagement’ (2014) 20(1) *Psychology, Public Policy and Law* 78

76 David Beetham, *The Legitimation of Power* (Palgrave Macmillan, 2nd edn 2013) xi

77 Tom Tyler, n 8, 45

**Table 2.** Tyler's measure of felt obligation to obey law

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People should obey the law even if they think it goes against what they think is right
I always try to follow the law even if I think it is wrong
Disobeying the law is seldom justified
It is difficult to break the law and keep one's self respect
A person who refuses to obey the law is a menace to society
Obedience and respect for authority are the most important virtues children should learn

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These data were obtained in our first survey (27th to 29th April 2020). All those participants in wave 2 who had previously answered questions about the legitimacy of law in general in wave 1 were included in the analysis, thus mitigating the risk of 'reverse causality'.<sup>78</sup> The variable was summarised into a scale variable between 0 and 100, excluding missing data, with those scoring 0 having the lowest felt obligation (strongly disagreeing with all the statements) and those scoring 100 feeling the highest obligation (strongly agreeing with all the statements). Preliminary multivariate logistic regression analysis had shown that only those in the top quartile of the distribution (having very high felt obligation to obey law) were significantly likely to comply. Thus, this variable was divided into a binary variable for the path analysis – between those who were felt a very high obligation to obey the law and those with lower senses of obligation.

*Legitimacy of lockdown law specifically.* As regards the legitimacy of lockdown law specifically, we followed Murphy, Tyler and Curtis' suggestion that 'the rules or laws of an authority gain legitimacy when they are consistent with people's moral values'.<sup>79</sup> In their study, they used participants' moral assessments of tax evasion as a measure of the perceived legitimacy of tax laws, akin to Reinders Folmer *et al*'s assessment of people's 'moral alignment' with pandemic restrictions.<sup>80</sup> Accordingly, we asked participants about their perceptions of the morality of breaking lockdown rules, inviting them to indicate how wrong they felt it was to do so. This was a categorical variable which, due to a relatively small number of participants stating that breaking lockdown rules was 'only a little wrong' or 'not wrong at all', was recoded into a binary variable, with those answering 'seriously wrong or very wrong' collapsed into one category, and those reporting 'moderately / only a little wrong /not wrong at all' collapsed into the other.

*Obligation to others.* Here we asked participants about whether they felt they owed it to others to comply with lockdown rules 'a great deal', 'a fair amount', 'not very much', or 'not at all', focusing on six groups: family; household; neighbours; village/town/city; country; and health service workers. Answers were scaled between 0-100, excluding

<sup>78</sup> Daniel Nagin and Cody Telep 'Procedural Justice and Legal Compliance: A Revisionist Perspective' (2020) 19(3) *Criminology and Public Policy* 761

<sup>79</sup> Kristina Murphy, Tom Tyler and Amy Curtis, 'Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?' (2009) 3(1) *Regulation and Governance* 1, 3

<sup>80</sup> Christopher Reinders Folmer *et al*, n 6

missing answers. Forty-one percent of the sample scored 100, reporting that they owed it ‘a great deal’ to all six groups to comply with lockdown rules. Therefore, a binary variable was created, divided between those scoring 100 and all others.

*Peer disapproval.* Drawing on Tyler,<sup>81</sup> participants were invited to think about five adults in the UK whom they knew best, and then asked to indicate the extent to which such peers would disapprove of the participants engaging in the twelve activities listed in the survey (‘a great deal’, ‘a fair amount’, ‘not very much’, ‘not at all’). We created a summary measure of peer disapproval that included the answers provided for all twelve activities (missing answers were not included). Thus, a respondent would score 100 if they perceived their peers would disapprove ‘a great deal’ in relation to all the activities they provided an answer for, but 0 if they reported their peers would not disapprove at all for them all. A scale variable between 0–100 was created. The result was then summarised according to quartiles. If a respondent fell in the lowest quartile of the scale, they were considered to anticipate low overall peer disapproval of breaking rules, and if in the highest quartile, very high overall peer disapproval. This was summarised in a binary variable, given that preliminary regression analysis had shown that higher anticipated peer disapproval increased likelihood of compliance relative to lower anticipated disapproval.

*Health impact.* This was measured by a single question: ‘if you were infected with the coronavirus, how seriously do you think it would affect your health, if at all?’. This was presented as a binary variable (very/fairly seriously compared to not very/not at all seriously).

*Procedural justice.* As is common in procedural justice research, we created a single measure from a number of relevant variables,<sup>82</sup> translating the procedural justice elements of ‘voice’, ‘neutrality’, ‘dignity and respect’ and ‘trustworthiness’<sup>83</sup> to the context of the law-making process. In relation to ‘voice’, we asked participants about the extent to which they thought the government was listening to people like them about the effects of the lockdown on their lives (‘a lot’; ‘a fair amount’; ‘not very much’; ‘not at all’). For ‘neutrality’, we asked participants about the extent to which they believed the government was listening to the advice of scientists about the crisis. As regards ‘dignity and respect’, we asked participants to indicate the extent to which they thought the government was being honest or dishonest during the pandemic. In relation to these three questions, participants were asked about their own government, depending on where they lived in the UK. For ‘trustworthiness’, we asked the following question: ‘thinking about how public officials and politicians themselves have acted

<sup>81</sup> Tom Tyler, n 8

<sup>82</sup> Glenn Walters and Colin Bolger ‘Procedural justice perceptions, legitimacy beliefs, and compliance with the law: a meta-analysis’ (2019) 15(3) *Journal of Experimental Criminology* 341

<sup>83</sup> Tyler and Jackson, n 27

during the crisis, in your opinion how hard are they trying, if at all, to act fairly during the crisis?' ('very hard' through to 'not hard at all'). These four variables formed the latent construct 'procedural justice'.

*Rule effectiveness.* This was measured by a single question asking how much of a risk there would be of catching or spreading the virus if participants engaged in an activity (ranging from 'a big risk' to 'no risk at all'). As with peer disapproval, we created an overall summary measure of risk. Taking account of participants' perceived risk for all the rules they provided an answer for, a scale variable between 0–100 was created. The result was then summarised according to quartiles. Guided by preliminary analysis using multiple regression, the variable included in our path analysis was a binary one, distinguishing between those with very high perceived risk (i.e. in quartile 4) and those with lower perceived risk (in quartiles 1, 2 and 3), since it was only having very high perceived transmissibility risk that increased compliance.

*Rights consciousness.* We explored rights consciousness by presenting participants with a list of nine rights ideas, framed in everyday terms and not the language of legal rights instruments (my right to earn a living; my right to spend time with family and friends; my right to worship as I please; my right to enjoy the outdoors as I please; my right to live life as I choose; my right to fully support those who need me; my right to protest outside with others; my child's or grandchild's right to an education; my right as a parent or guardian to choose what is best for my child). We asked participants to indicate whether they felt lockdown unacceptably violated these rights, acceptably violated them, or did not violate them. Our concern was with whether people felt their 'rights' had been unacceptably violated. Again, a scale variable between 0–100 was created (missing answers were not included). This was divided into quartiles, with the binary variable created dividing the top and bottom quartiles to indicate high and low rights consciousness.

*Police sanctions.* This was measured by a single question asking how likely or unlikely it was that participants would be issued with a police warning or fine, should they engage in an activity. As with peer disapproval, this was summarised into a variable that accounted for the extent to which, across all the twelve activities, participants perceived the likelihood of being issued with a warning or fine. The result was then summarised into a binary variable, divided between those in the top two and bottom two quartiles of the distribution.

## **Study Limitations**

It is important to acknowledge the limits of empirical studies. We set them out here. First, although participants were selected randomly from the panel base of over

185,000 UK adults, it is still a ‘non-probability sample’<sup>84</sup> and due caution must be exercised when interpreting the findings. The use of a professional panel provider was considered necessary given the pace of events at the beginning of the pandemic and the desire to begin the panel study quickly. Second, although it is a standard approach within the fields of public health and criminology, our dependent variable is based on self-reported rather than observational data. It is possible that social desirability caused some participants to over-estimate their adherence to restrictions, particularly in the context of pandemic.<sup>85</sup> Third, we did not test the full range of psychological predictor variables identified in the public health literature such as, for example, personality or broader attitudes. Equally, we did not explore the perceived legitimacy of public authorities, examined in Murphy *et al*<sup>86</sup> and Reinders Folmer *et al*<sup>87</sup> research. It is thus possible that there are unobserved factors within our study. Fourth, we acknowledge that some of the pandemic rules within the UK were qualified in the sense that some ordinarily restricted activities were permitted in exceptional circumstances (e.g. visiting someone in their home in order to provide care for them). Thus, it may be that some of our data about engaging in ‘restricted’ activities represents compliant, rather than non-compliant behaviour. Finally, the study is limited to one country only: the UK. We make no claim regarding the application of these UK findings to other countries.

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### DISCLOSURE STATEMENT

No potential conflict of interest was reported by the author(s).

<sup>84</sup> Probability sampling involves each member of the population having an equal chance of being selected to complete the survey. Some form of random selection is used to create the survey sample. Such randomisation reduces the risk of the sample being skewed in some way and represents the best opportunity to create a sample that is representative of the population.

<sup>85</sup> J F Daoust, É Bélanger, R Dassonneville, et al, ‘A Guilt-Free Strategy Increases Self-Reported Non-Compliance with COVID-19 Preventive Measures: Experimental Evidence from 12 Countries’ (2021) 16(4 April) *PLoS One*.

<sup>86</sup> Kristina Murphy, Molly McCarthy, Elise Sargeant and Harley Williamson, ‘COVID-19 Conspiracies, Trust in Authorities, and Duty to Comply with Social Distancing Restrictions’ (2022) 2 *International Criminology* 44

<sup>87</sup> Christopher Reinders Folmer et al, n 6