



Trusting in Law.

***The Portrait of Justice with
a Human Face***

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Thank You!

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Why *trusting* in law

- Justice is perhaps the public service that most directly depends on a **strong trust relationship** between public institutions and citizens [OECD (2017), *Trust and Public Policy: How Better Governance Can Help Rebuild Public Trust*]
- Perception of **(dis)trust constitutes palpable evidence**
→ trust thus plays a very tangible role in the effectiveness of government (OECD, 2017)

The meaning(s) of *trust*

- Trust is largely understood as “**holding a positive perception about the actions of an individual or an organisation**” (OECD, 2017)
- Trust is as much about **perception** and subjective interpretation as it is about **facts** and direct experience

Functions of *trust*

Rosanvallon, 2008:

- 1. *trust* represents an **expansion of legitimacy** - it adds to a mere procedural attribute both a moral and a substantive dimension
- plays a **temporal role** - trust is essentially an hypothesis about future behavior
- is an **institutional economizer**, in that it eliminates the need for various procedures of verification and proof

The society of *distrust*

- There is an erosion of trust in the contemporary society - only a minority tends to trust justice and the national legal system in Romania (2017 Special Eurobarometer 461 "Designing Europe's Future: Trust in institutions ...")
- Three factors – **scientific, economic, and sociological** account for the rise of “the society of distrust” (Rosanvallon, 2008)

The society of *distrust* - factors

- **Scientific** – in the current “risk society” (Ulrich Beck), an age of catastrophe and uncertainty, modern industry and technology tend to be associated more with risk than with progress
- **Economic** - medium and longterm predictions can no longer be relied on - today’s economy, both more open to the world and more complex than yesterday’s, seems far less predictable
- **Sociological** – in the “society of estrangement” (Michael Walzer) the material bases of social confidence crumble - individuals trust one another less because they have fewer personal ties.

Trust in law is crucial

- As regulation is one of the most important interfaces between citizens and government, the ability of the regulatory process to engender public trust **is crucial** to the broader issue of trust in public institutions (OECD, 2015a)
- Perceptions of fair process lead to:
- **greater acceptance of legal decisions**
- **better compliance with regulations**
- **more co-operative behaviour in dealing with the government**

Trust in law

- Perceptions of fair treatment can play a role in virtually any context in which citizens interact with public institutions
- In the realm of law, such interactions occur for the most part in 2 settings (OECD, 2017) :
 - 1. when governments seek citizen input on proposed regulations, and**
 - 2. when citizens encounter enforcement actions, hearings, and appellate procedures as regulations are administered.**

The keys to *fair process*

- In either of these categories of **citizen engagement** with regulation, perceptions of fairness can be improved by procedures and official behaviour that promote: **voice, respect and explanation** → the keys to fair process

Fair process

- ***Voice*** effects occur only when there is reason to believe that voiced views have been considered by the person or agency that is making decisions (Tyler, 1987)
- ***Respect*** - theorists believe that people generally interpret fair treatment as an indication of whether they can co-operate without fear of being excluded or exploited.
- ***Explanations*** - concern how the process will play out, a description of what the decision criteria are, and an account of how the decision maker will go about arriving at their decision.

Normative v instrumental perspective of *compliance*

- There is a distinction between what people regard as fair and what is in their self-interest: the normative v instrumental perspective on why people follow the law (Tyler, 1990; Sandel, 2010)

Coercively imposed v voluntarily assumed behaviour

- Literature shows how the age we are leaving behind is one in which the practices of moral judgments were being taken away from the individual, and instead routinised as systems of rules and law made by "others" (Wheeler, 2002; Patapievici, 2001).
- But, the present gives us a chance to recover individual choice and, at the same time, participate in a collective ethical life (Wheeler, 2002; Patapievici, 2001) - the concept of sustainability



“Better regulation”

- Aarhus Convention (RO 2000) - not only an environmental agreement, it is also a Convention about government accountability, transparency and responsiveness (UNECE)
- EU level, the Commission launched the **“better regulation”** package



“Better regulation”

- “better regulation” is not about regulating or deregulating; it is a way of working to ensure that political decisions are prepared in an open, transparent manner, informed by the best available evidence and backed by the comprehensive involvement of stakeholders (Commission, 2017)