



**MTA Law Working Papers
2017/08.**

**Why People Obey the Law in
Hungary? Thoughts over pieces of
empirical evidence**

György Gajdushek

Magyar Tudományos Akadémia / Hungarian Academy of Sciences

Budapest

ISSN 2064-4515

<http://jog.tk.mta.hu/mtalwp>

Why People Obey the Law in Hungary? Thoughts over pieces of empirical evidence¹

by György Gajduschek

WORK IN PROGRESS!

PLEASE ADDRESS YOUR COMMENTS TO: Gajduschek.gyorgy@tk.mta.hu

THIS PAPER HAS NOT BEEN PROOF-READ

The paper is a first attempt of interpreting result of various surveys that seem to contradict the current mainstream scholarly belief that it is procedural fairness in law enforcement that is crucial to legitimate law and authorities that apply law in everyday practice. This approach also argues that sanctioning, applying penalty against those who break the law is highly inefficient (costly and its deterrence effect in fact minimal). Based on Hungarian survey data collected by our team² as well as on some other published and unpublished data I will attack the above described theory, at least as a general theory that supposed to be valid anywhere outside the Anglo-American World. Most importantly I will argue that sanctions play a crucial role in determining people's law-abiding behavior. I am convinced that – despite some comparative attempts to test and prove to theory in a non-Anglo-Saxon context – the theory may be highly ethnocentric, thus, it is questionable if that fits to other social-cultural-legal systems, such as the one in Eastern Europe.

¹ The present paper has been published with the support of the Hungarian Ministry of Justice, within the framework of the program entitled 'The Elevation of the Standards of Legal Education

² The survey was financed by the Hungarian Research Fund within OTKA 105552 (Legal conciousness of the Hungarin population) project.

A critical overview of the theory

A sociological approach

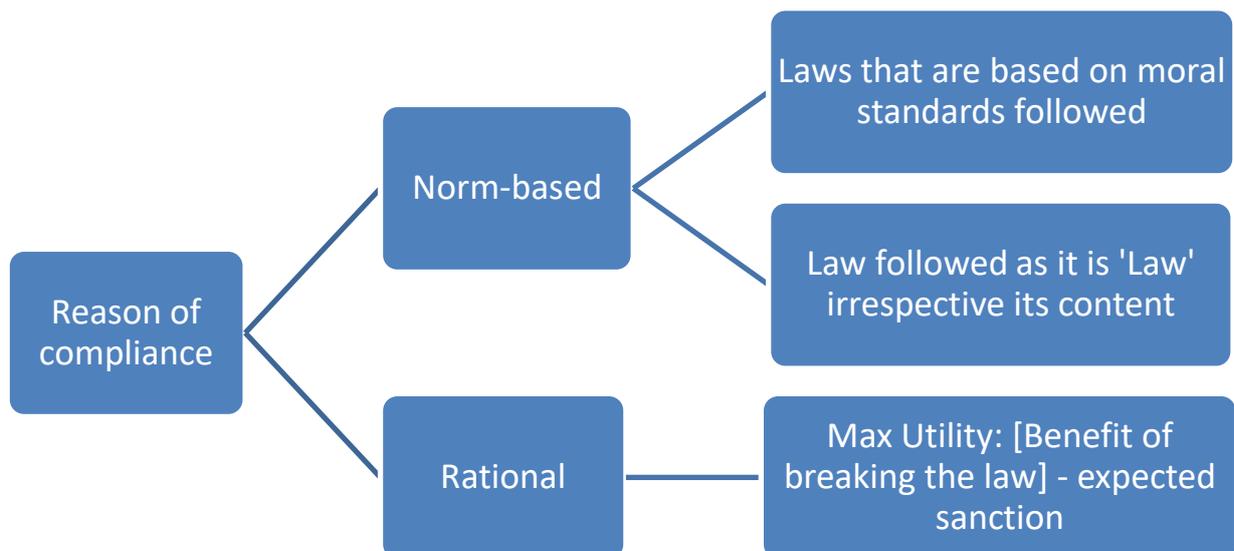
There are several attempts to identify main reasons, or motivations of compliance, i.e. “obeying the law”. Nevertheless, on a very abstract level, there may be two explanation depending on what one thinks of human nature. (March & Olsen, 2004) Namely, if humans are considered rational utility maximizing individuals, or if – in the opposite way – they are conceived as members of social groups and society at large, individuals who follow values, norms, customs, behavioral standers.

Those who accept the ‘rational men’ view will believe that people calculate the benefits of breaking the law and the expected value of sanction for that and only if the latter is higher will they follow the law. This approach is also called instrumental or deterrence approach, emphasizing the role of sanctions. This approach may be relatively simple, though issues like information and information asymmetry, attitudes towards risk, and the perceived probability and size of sanction (*vis-à-vis* real data on these factors) make the model significantly more complex. This model is perfectly adequate for the economics approach, and economist did a lot for better understanding in this regard. (Becker, 1968; Posner, 1985; Stigler, 1970) Later a whole new discipline, Law & Economics was based on this approach and became dominant by the 1990s in legal scholarship and remained so for one or two decades.

According to the ‘social men’ view people basically follow – largely unconsciously – social norms. This approach, however, unlike the rationalistic approach with its one explanatory model of utility maximizing, suggest several potential paths explaining how and why social men obey the law. The role of social norms may be greatly different or even contradicting in these theories. People may, and presumably typically do follow the law because the behavior required by the law coincides with moral standards or customs. Most rules of the classical legal fields (criminal law; property law, contract law) may fit into this category. E.g. criminal law punishes murder or theft but most of us do not commit these acts because of the existence of modern law but because of internal moral inhibition. It has been discussed widely in psychological and socio psychological literature why people follow these non-legal social standards, frequently unconsciously, somewhat automatically. Socialization, especially early childhood may play a major role; following/copying the appreciated persons’ behavior (parents first, respected group members later, etc.). What is the role of unconscious learning, copying others, conscious learning in order to fit to a group? How informal sanctions (from, a sudden silence in a discussion, through an angry look, to ostracize from a community? These are important questions none of which has been fully answered.

Perhaps the most important distinction within the socially motivated compliance category is between (a) obeying the laws because we accept that laws must generally be obeyed (e.g. irrespective of the circumstances and the content of the specific law), and (b) every other reasons of norm-driven compliance. This is summed up in the below graph.

1. Figure Classification of major theories about reasons of law-abiding behavior



The two approaches within norm-based compliance may easily conflict with each other in everyday life. This happens in every case when we face a law that we do not agree with or even find it highly immoral. This conflict provides an excellent topic for everyday discussion, for the literature (see for instance Antigone) and moral, political and legal philosophy (e.g. if that is right to kill the tyrant). If one's behavior is described according to model (a), she will obey the law that she finds unjust, whereas if model (b) is valid, she will break the law to satisfy her inner conviction.³ It is also important to see that historically model (a) is quite new, it is related to the establishment of the modern state and legal system. This is exactly the wider theoretical frame (i.e.: rationalization in the modern Occidental cultures) in which Weber discusses the issue.

The major problem with Weber's model is perhaps its uncertain status between the above described two categories (i.e. rational vs. social men). Weber's model fits into his theory of rationalization. However, Weber's interpretation of the term is largely different from the 'rationality' as used by contemporary economists or typically also by social scientists.⁴ It does not reflect directly to utility maximization. Whereas goals-means logic is part of Weber's term of 'rationality' it contains several other factors, that do not fit to the contemporary mainstream concept of rationality. In fact, it is quite difficult to categorize Weber's legitimacy theory within the above dichotomy. Is that rational calculation or is that a norm-driven behavior that makes legal norms accepted in modern society? The legalistic authority may be summed up as an – unconditional, non-reflected and basically irrational – belief in rationality. Or, to enlighten the paradox in another way: legalistic legitimacy presumes a social (i.e. non-legal) norm that assures that people obey the laws even if that is against their social norms. In other words Weber presumes a general social norm that suppresses all other

³ All these speculations are relevant only, of course, if the given person is aware of the legal regulation. If she does not know the law, which may be quite frequently the case, these issues of conflicting norms is not activated.

⁴ See on that: (Elster, 2000; Gajduschek, 2003; Habermas, 1985; Schluchter, 1981)

social norms in favor of the legal norms, just because those were created in a formal manner by the state, which is quite alien to normal social norms. In spite of these contradiction that one may sense in Weber's theory, the major problem is, at least in my view, that he does not provide a reliable motivational theory. It is very difficult to believe that people accept the law just because it was created in a formally appropriate manner; especially if we presume, or know from empirical evidence that most people do not even know what the 'appropriate manner' is (i.e. what is the law-making process, which entities may create, which types of laws, how laws may be known, etc.).

Indeed, scholarly discussion on why people do obey laws (and why should they) has been present almost since laws (i.e. behavioral norms, made by government entities) exist. Undoubtedly, this is a crucial question of legal sociology. Still, seemingly most legal scholars and even professionals seem to have in mind two elements when (if ever) thinking about the reasons of social compliance with laws. If asked, they would refer to deterrence by sanction, and acceptance of the law as one to be followed in every circumstance, due to its special way of creation.

Tom R. Tyler's theory and its critique

More recently Tom R. Tyler's theory seems to dominate the discussion on this academic field. Tyler states that the procedural justice of law enforcement activities, as perceived by the affected parties, is the key factor of law-abiding behavior. It is the fairness of procedures and not the sanction that works. Sanction may even appear as an unfair official action that typically alienates the community from law enforcing authorities. An overview of the argument is summed up in an encyclopedia entry, summarized in the following excerpt:

In this entry we argue that a deterrence model of legal authority is not only expensive and minimally effective; it also undermines forms of social capital that promote long-term public commitment to the law and, crucially, the public cooperation on which legal authorities fundamentally rely. The exercise of authority via the application of fair process strengthens the social bonds between individuals and authorities. Procedural justice promotes normative modes of compliance and cooperation that are both more stable and more sustainable in the long run. (p. 4012)

In other words, detection and sanctioning is not only ineffective and costly but systematic sanctions may even alienate people from authorities (i.e. police). Some empirical studies seem to prove this conclusion even stating that sanctions do not increase, rather decrease compliance among citizens. (Pratt, Cullen, Blevins, Daigle, & Madensen, 2006) and more recently (Murphy, Bradford, & Jackson, 2016) reached a clear negative relationship between – self assessed – deterrence and compliance. These findings are somewhat shocking taking into account that governments and legal systems have been based for several millennia on the belief that law exerts its effect mostly via the sanctions. Others (e.g. Nagin, 1998), searching various empirical studies found that, while the effectiveness and efficiency of sanctions may be questionable, a preventing effect is undoubtedly present.

Neither the limits of this paper, nor the presumed competencies of the author does allow a detailed critical overview of Tyler's theory and – perhaps more importantly – of the large stream of empirical research based on that theory here. Still, a few remarks may be acceptable.

First, what is (and what is not) procedural justice? How do we interpret and then operationalize this concept? Tyler first (Tyler, 1990) treats procedural justice as an opposite pole to distributive justice. In the above mentioned encyclopedia the authors provide a four item list of major elements of procedural justice, which are, on one hand, acceptable, widely shared procedural principles, on the

other hand, they may contradict one another (especially for minorities). One of these requirements is the neutral, unbiased treatment, based on legal principles. Another suggests respect to the client (i.e. perpetrator) and handling the case in a way that serves best the client's interest. My general statement that these two may easily get into conflict, especially in case of different cultures. This is most self-evident in case of substantive laws both from practice (e.g. traditional Muslim values in the British society) and from the literature.

Tyler's theory, in my view, is based on the implicit presumption that ideas about fairness are roughly the same in every culture and in every societal arrangement. Otherwise, acting in a way that is perceived fair by all communities in a given society requires from the authorities the (a) knowledge of the given communities values and (b) the readiness and ability to follow those values. This latter requirement means that either (b.a) the general law and the given communities' moral and behavioral standers fit perfectly together, or (b.b) that the authorities are ready to apply laws in a kind of 'relaxed' way, i.e. in favor of the client who has broken the law.

This problem is related to at least two classical tenets in legal scholarship (traditional or sociological). First the idea, attributed to Durkheim, that in modern, largely anomic societies there is no anymore a generally shared set of values.⁵ The only general normative system of modern societies is law. Law is the only common denominator that the authorities required to follow and, which is expected to be followed by all citizens. Durkheim in this regard sees law very similarly to Weber. The major question in both theories of these two great social theoreticians (fathers of sociology), which in my view basically remained unanswered is "why people would obey the law"; in other words, what is the psychological, motivational reason of the readiness to accept laws as such? Tyler's theory may be considered as an attempt to answer this question. However, it cannot handle the problem of diverse cultures of various communities within the same society. This problem is more self-evident in case of substantial laws, presumably related to distributive justice and perhaps less to procedural justice, but most likely the controversy exists in this latter case as well.

Another classical theoretical controversy – probably concealed in English by the term 'equity' embedding both elements – is between the requirement of unbiased treatment and the requirement to treat every case reflecting on its specificity. Treating each individual (irrespective of any aspect that is not directly related to the case; e.g. religion, race, appearance of the person, sympathy of the decision-maker) equally is a general requirement. Only elements relevant to the case can be taken into account for a legal decision and it is the law that determines what is relevant. Treating everyone equally in a legally equal case is the key value of civil law systems. On the other hand, it is also a crucial requirement that each case and each individual is different and they deserve a careful consideration of the specificity of the case, not just the blind classification under certain paragraphs. This approach is very strong in the common law tradition, as it may be captured in the simple, but legally also relevant principle of 'fairness'.⁶

⁵ As (Silbey, 2013, p. 10) sums it up: "Durkheim argued that law had become the embodiment of the collective conscience - the links and glue of human transaction - in an age of interdependent connections. Within societies that had an advanced division of labor, where social and functional heterogeneity rather than similarity prevailed, law displaced religion as the source of generally shared norms and expectations..."

⁶ This principle appears in such ancient Roman wisdom such as "summum ius summa iniuria", the generally (irrespective of the specificity of the case) applied law is the greatest injustice.

I argue here that these two requirements, treating everyone equally, categorizing actions according to the law, and, on the other hand, fairly, with an eye on the specificity of the case are easily contradict each other and this occurs in case of procedures and procedural justice.

In fact this difference may be the main difference regarding the modern legal systems, the Anglo-American common law, and the civil law systems. As Merryman & Pérez-Perdomo (2007) emphasize, the key for the civil law tradition is predictability, that is each case classified under the same legal rules are decided in the same way, irrespective of any elements of the case not identified as 'legally relevant' by the written law itself. The common law, on the other hand, treats each and every case as specific and emphasizes fairness in the specific given case. It is not difficult to realize that the two legal systems are dominated by highly different procedural values and these values may conflict in a given case.

Tyler's theory seems to neglect these conflicting values and/or – not surprisingly, consciously or in a non-reflected manner – stands on the side of common law procedural values. The issue may seem overly theoretical. In fact it is not; it is crucial for the conception of deterrence. Following the first approach, preferred by Tyler, circumventing strict sanctioning by authorities in certain cases may increase the feeling of fair treatment in certain communities, that may increase the acceptance of the legal system and authorities and the potential cooperation level in the future. Having a look at on this story from a different angle, say from that of the civil law systems, the same conduct of the authorities are strongly questionable, may be considered as biased, even arbitrary and thus highly unfair action of authorities. It could be conceived as misuse of legal authority or even a clear sign of corruption. Please note, that this is not just a general problem of conflicting values but this refers to conflicts between legal values, and specifically between procedural legal values.

I argue here, that Tyler either neglects the contradiction between two conflicting procedural legal principles, that are both theoretically and practically highly relevant, or he simply accepts one by neglecting the other in an ethnocentric manner.

Second, Tyler's theory is based on the 'social men' – referring back to the dichotomy by March & Olsen (2004) – who follows moral and behavioral standards of a community, of groups, or who fulfills role expectations, etc. – depending on psychological, social psychological or anthropological approaches. This standpoint is why Tyler may deny the use (efficiency and effectiveness) of deterrence. However, an increasing number of entities subjected to law are not individuals, are not humans but organizations. Some, or most of these organizations per se do not reveal human features. Furthermore, most of these organizations function in a 'social system' as described by Jurgen Hebermas (1985) and other scholars, like (Luhmann, 1995). The systems enforce their own 'logic' on participants, in a way much more cruelly than modern law does. Those who do not obey this logic are sanctioned, and relatively quickly selected out, by a way of systemic 'death penalty'. The most obvious and well-known example is market economy. Most economists, including such diverse approaches as Marxist and neo-classical economists, agree that the market enforces efficiency and if the requirement of market efficiency contrasts with any other aspect, including moral, aesthetic and other consideration or even legal rules the former prevails. Firms in a market strive to make the best decisions based on rational calculation. Those who fail to make rational decisions cease to exist. Accordingly, laws are followed only if that worth to do so. Actors must

calculate costs (expected value of sanction) and benefits of breaking the law and their decision will be based on this rational calculation.

In other words, Tyler’s theory – irrespective of any other potential critiques – is per se invalid for a large number of actors, organizations that are aimed by an increasing number of laws. For instance Silbey (2013), in her paper analyzing a century of regulatory enforcement literature, finds the fact that organization appear in an increasing number and importance as legal subjects as a major challenge of modern legal systems.

A critical view on empirical studies

My final comment refers to the enormous number of empirical studies that have been published in the past two decades testing of and elaborating on Tyler’s theory. Most of these studies seem to basically support the theory. Most surprising may be those studies that empirically indicate a negative relationship between compliance and deterrence(Jackson et al., 2012; Murphy et al., 2016), suggesting, quite counter-intuitively but in a way supporting Tyler’s theory, that deterrence improves rather than reduces the chance for infringement of laws.

Almost all of these studies measure compliance on a self-reported basis. Compliance is not detected or observed; instead people are asked in a way if they follow the laws and these answers are used as a dependent variable explained by other variables that are also based on the respondents’ answers to other questions. It is a general methodological question of how reliable people’s answer are in questionnaire surveys, especially if that is used as an indicator of people’s real behavior. The issue have been widely discussed in the methodological literature as ‘social desirability’ and ‘acquiescence bias’, when the respondents attempts to provide answers that she thinks is appropriate, according to general social values and/or the interviewer. It seems self-evident that this danger is exceptionally high if the behavior at hand refers to serious breaking of social norms, such as infringement of laws, e.g. not paying taxes that is an extensively studied field. While this is a general problem of survey methods it may appear to quite a different extent and quite a different type in various countries. Table 1 shows data that are estimates of real tax evasion and the citizens’ self-reported attitude to tax evasion as a behavior.

1. Table Tax evasion as a percent of collected tax and the acceptance of tax evasion by citizens⁷

Country	US	Brazil	Italy	Russia	Germany	France	Japan	UK	Spain
Tax evasion as % of tax collected	8,6%	39,0%	27,0%	43,8%	16,0%	15,0%	11,0%	12,5%	22,5%
Justification for tax evasion (1-10)	2,6	3,62	2,18	3,03	2,2	2,83	1,46	2,28	2,06
Correl. coef.:	0,638								

⁷ The size of tax evasion is calculated by the author from data provided at Guardian DataBlog. <https://www.theguardian.com/news/datablog/2013/sep/27/tax-evasion-how-much-does-it-cost-a-country>). The acceptance of tax evasion is the mean value of answers given in the country, within the World Value Survey, wave 5 (2005-2009), to the question of how justifiable is it... “Cheating on taxes if you have a chance”, measured on a 1 (never justifiable) to 10 (always justifiable) scale.

The table indicates that though there is a relationship between subjective moral evaluation of tax evasion and the factual measure of tax evasion the relationship on a country unit level is not very strong. The correlation is not significant ($p=0,064$). It seems especially clear that while Russia is not the most morally permissive, closer to France or even the US than to Brazil, tax evasion is far the largest in this country. Of course, several reasonable objection may be raised against this simplistic, almost primitive argument. First, data are measured on country level, not the level of individual, which may be especially relevant if individual and organizational behavior differs greatly in the country, or there is a strong cultural fragmentation in the country in this regard. Second, this question does not refer to factual tax evasion by the respondents, but to the moral assessment of such an act. Third, companies that may be responsible for a large proportion of tax evasion naturally are not in the survey. However, most likely the difference would be even higher, regarding such a question, at least in the post-communist region. In brief, self-reported compliance as the main dependent variable raises serious doubts generally about the validity and reliability of such research and it seems especially vulnerable to this failure in post-communist countries and probably several other parts of the non-Anglo-American World.

As a next step most of the studies follow the routine logic of hypothesis testing, working with one dependent, and one or typically more independent variables, with possible mediating variables (a typical direction in recent studies). This arrangement sets up the logic of analysis and thus conceals the fact that what researchers could find is the statistical relationship between the measured variables.

Let's have a look at on a very intelligent, sophisticated research following a time series research design, asking tax offenders in three points of time by Murphy et al. (2016)! The authors set up a relatively complex structural equation model (frequently used in this type of studies) to test the relationship between procedural justice and compliance mediated via legitimacy and social identity (identification with certain groups such as 'law abiding people' by the respondent). Compliance variable here again is based on self-reporting, though the respondents were selected from tax office data as tax evading persons, and the research took several years, that may allow collecting data again on those who remained in the sample. (The authors did not explicate why did they not do so; e.g. research ethics, unavailability of data.) The importance of these mediating variables convincingly described in the first part of the paper. An additional element, stigmatization serves as a variable related to social identity, Another additional variable, morality, is much less discussed. The model is depicted in graphical form of a path model where arrows show the presumed cause-effect relationships. There are four variables that are in direct, explanatory relationship to compliance of which 'morality' has far the strongest explanatory power, whereas deterrence has the weakest and negative effect. This diagram serves then as the basis of testing the hypotheses set up by the authors. The model itself and its graphical presentation with the arrows conceals the fact that the basis of it are the statistical relationships, which by definition do not have a direction. It is difficult to resist an alternative interpretation of the same statistical relationship, that is, we have of indicators of the respondents' attitudes towards authorities, their behavior, legitimacy, law abiding behavior and morality which are interrelated and correlate as all are segments of individual's psyche. In other words, these data may have much more to do with psychology than legal sociology, with impressions and attitudes than with facts. My impression is that the same data may be much better explained from this perspective. 'Morality' may be the central element that may be strongly related to all other variables of the model, which however, is not measured in the model. Most interesting is the

significant, negative relationship between ‘deterrence’ and ‘compliance’. A glance on the well documented variable list reveals that ‘deterrence’ is measured by one question only, namely: “What do you think the chances are that you will be caught claiming \$5000 as work deductions when the expenses have nothing to do with work?”. If one is not bound by the model logic it is easy to realize that the relationship makes perfect sense in the opposite way. It is not that ‘deterrence, i.e. perceived chance of sanction decreases compliance’, rather: ‘compliance minimizes the chance of sanction’. This, self-evident interpretation, however, is eliminated by the research model.

Several empirical studies whose findings seem to support Tyler’s theory, while methodologically are highly professional, in some quite basic elements are systematically questionable. Most importantly almost all studies are based on self-reported compliance data that can be conceived more as the expression of the respondents’ psyche conditioned by the survey situation, than an indication of real behavior.

Several of these issues that may be generally raised about the research are specifically relevant in CEE and probably generally in a non-Anglo-American context.

Some relevant empirical data

At this early stage of research I will attack only two issues relying on three empirical research sets.

First I will provide a review of research findings regarding Hungarian people’s self-reported motivation for obeying the law. Based on these data, I will argue that sanctions, at least in a society like Hungary, are important. Second, I will argue that distributive justice seems more important than procedural fairness, based on Hungarian citizens’ report in a representative survey.

Why people obey the law – according to the people

A representative questionnaire survey (CAVI) of one thousand Hungarian citizens over the age of 18 was administered early December in 2015. The survey was carried out under the research project investigating “Hungarian legal consciousness” (OTKA 105552). The questionnaire referred to legal culture of respondents, including questions on beliefs about and attitudes towards law and the legal system. In this questionnaire we asked people directly why they do obey the law. We have offered five potential answers that had to be ranked by importance. The results are presented in Table 2.

2. Table Why do you personally obey the laws? (the smaller the mean the higher the assessed importance)

	Mean	Std. Dev.
you do not want to be punished	2,62	1,382
you agree with most of the rules and you keep those	2,85	1,211
you do not want others to scandalize you, to judge you	3,82	1,261
basically, laws are in your best interest, too.	2,97	1,305
you think that laws must always be followed, regardless of anything else	2,74	1,562

Seemingly the first choice of respondents, measured by the mean, is to avoid sanctions. This data surely does not support the theory that disregards or even denies the importance of deterrence. The second choice refers to the general principle that laws must always be obeyed. Please note, that this

statement, as it was formulated, implies that procedural fairness is considered irrelevant by those who fully supported this statement. The survey originally did not aim at testing Tyler’s theory, thus unfortunately we have not offered an alternative answer referring to the conceived procedural fairness of the authorities. Still the data seem to prove that deterrence – at least as people conceive it – plays a crucial role that raise doubts about Tyler’s theory.

A non-representative survey carried out by four students during late March, early April in 2013, at bus stops in the center of Budapest, the capitol for the largest city of Hungary. Students had to approach those smoking near (not in) bus stops and asked thirteen, typically quite simple, questions, mainly about the reason of respondents’ behavior. The questionnaire was designed in a way that it can be quickly asked and filled in by the students, as if the bus arrived, the interview situation ended. For the same reason basic socio-demographic data: age, wealth and education level (each measured in three or four categories, besides gender) assessed by the students were recorded immediately after the interview.

A few month before this survey was carried out, a new law was adopted stipulating that smoking was prohibited in bus stops; smokers need to stay at least five meters away from these places. Students asked those who smoked further away from the bus stops why do they do so. First, they asked if the respondents had heard about the new regulation, and for those who answered positively (95% of the respondents)⁸ we offered the five potential reasons and asked to evaluate their importance on a 1 (not at all important) to 5 (very important) scale.⁹ It is important to emphasize that unlike almost all studies that rely on self-reported compliance, in this case the real compliance was observed and questions about reasons of compliance was addressed to those who in fact complied. Results are presented in Table 3.

3. Table Answers of these who follow the law limiting smoking (the higher the mean the higher the assessed importance)

I smoke here, further away from the bus stop because...	Mean ¹⁰	Stdv.
I do not want to be punished	3,63	1,33
I’d feel ashamed if others see as I am caught red handed/ and sanctioned	2,84	1,24
I agree with this rule and that’s why I follow it	3,52	1,30
Laws must always be followed, that’s why I follow this one too	3,43	1,14
I do not want others to scandalize me	2,65	1,24

Sanction again appears as the most important self-reported item of inducing law-abiding behavior. However, in this specific case the fact that respondents agreed with the decision (not to smoke in the middle of crowd) and that came out as the second most important element, whereas the general principle that laws always must be followed received a somewhat lower mean value. The two other items that were supposed to test the effect of group remained quite low, possibly as the ‘social group’ in this case is a set of ad hoc unknown people. Still, even here, being seen sanctioned generates more discomfort then having been scandalized. The last two questions asked about how

⁸ When asked „Why do you smoke here?” 63% immediately mentioned the law, and on further question „Have you heard about the law...” only 5% give a negative answer. 93% of the respondents said that they knew they may have been fined by the police for smoking in the bus stop and 52% said that they know the maximum measure of fine, too.

⁹ The same scale is used in school grading in Hungary, thus it was easily manageable for everyone.

¹⁰ Note that in this case we did not use ranking but a Likert scale, thus, unlike previously, the higher values mean higher importance.

the respondents would behave if they knew that smoking in the bus stop (infringement of the law) will surely be not punished? 67.2% of the respondents said that without the threat of sanctions they would not follow the law. Quite surprisingly, 57% (!) of those who claimed on another question that they agree with this rule said that they would not follow the rule, that otherwise they agree with, if no sanctions applied.¹¹

We also asked respondents, with an open question, why they would not follow the law. A very characteristic answer that appears several times, though perhaps in a less sharp format was this: "It's silly! Laws are to enforce obedience. It would be perfectly senseless if no one checks if people obey and no one punishes those who don't. "

In sharp contrast with the theory that deterrence is largely irrelevant, average Hungarian citizens mentioned sanctions as the most important motivators of law abiding behavior. We received an identical result when testing a representative sample and when asking people who factually followed a given rule. This latter research, while not being representative, is based on observed compliance; in sharp contrast with the overwhelming majority of studies in this field based on self-reported compliance. While the question indicating the role of deterrence is not contrasted by questions referring to procedural justice they are contrasted with four other potential causes of compliance, all being scored below 'deterrence'.

There may be several potential explanations of these findings that deserve further investigation. At this point they may be presented only as feeble hypotheses. First, possibly the law perceived as an entity whose inevitable attribute is legal sanction in case of non-compliance.¹² This interpretation of the law may be much stronger in civil law countries, as here the law is conceived as an act of the government. Furthermore, public law enforcement, at least in the European continent, plays a much larger role compared to private enforcement, than in the Anglo-American world. A large number of regulatory agencies of the executive are trusted to continuously monitor compliance and punish detected non-compliance in a wide range of fields. Other parts of our representative survey, not to be reviewed here in detail, also indicated that law is typically conceived, in this cognitive frame: as a highly formal, suppressive phenomenon by which the government regulates (or supposed to regulate) 'others' in order to assure public interest.

Second, predictable, definite sanctioning of evident infringements of laws may be expected by the majority of the population. This expectation, however, has not been met after the collapse of communism and the following chaotic period. As elsewhere I have proven (Gajduscek, 2008, 2015), sanctioning law-breaking behavior in Hungary has been highly ineffective. Due to the lack of appropriate regulations, appropriate government capacity and several other interdependent reasons exacerbating governmental incapacity, it is a typical experience of citizens that laws are not enforced.

¹¹ This fact provoked intensive discussion among Hungarian scholars looking for potential explanation. Extreme level of anomy on, social level, and/or extreme level of material values (Inglehart, 1997), i.e. utility maximization irrespective of others' utility, opinion, and irrespective of social norms, on individual level, appeared as potentially most plausible explanations.

¹² Indeed, a central tenet that every law student learn at Hungarian law faculties at an early stage of their studies is that legal norms consist of three elements: the 'condition' the 'order' and the 'punishment'; following somehow the "IF – THEN – ELSE" logic. In Anglo-American law schools typically two such elements are mentioned: the 'protasis' and 'adopsis' (Twining & Miers, 2010, p. 132). There certainly is a relationship between professional and general-social legal culture; i.e. internal and external legal culture. (Friedman, 1975)

Deterrence has hardly worked at all. Kagan and his colleagues, while emphasizing the importance of other factors, also refer to the importance of deterrence. Interestingly and also very intelligently, in the authors' interpretation the function of penalty is not solely a rational element, not simply information to rational calculation. Penalty for law-breakers has a very strong emotional and moral message to the members of society at large.

To summarise, some significant level of legal enforcement - although it is not that clear quite how much - is undoubtedly essential in generating and assuring compliance. Enforcement is important first of all in the communicating regulatory norms and threatening credible levels of monitoring and legal sanctions for noncompliance; second, for its reminder effect ('check your speedometer!'); and third, for its reassurance effect ('you're not a fool to comply; we are really looking for and finding the bad apples'). (Kagan, Gunningham, & Thornton, 2011, p. 52)

These factors were all missing in post-communist transition Hungary. In fact it worked on the opposite direction, as the lack of relatively predictable punishment of perpetrators sent out the message that you may break the laws, do not need to care about speeding, etc. It has been a general experience of ordinary people, that law-breaking remain typically unpunished and those who want to are easily able to infringe the laws without any negative consequence. Thus the general atmosphere increasingly suggested that if you obey the law, you are fool.¹³ In this context a strict and stringent application of legal penalties, with a declared disregard for the specificity of the case, for perpetrators explanations and extenuation, may be considered by the society as proof of fairness; though I have difficulties to decide if this is procedural or distributive justice.

Distributive vs. procedural justice

Tyler considers procedural justice generally a key to legitimacy, acceptance of laws and the basis of cooperation with law enforcing authorities. Originally (Tyler, 1990), he explicitly contrasted distributive and procedural justice to prove that the latter plays decisive role. Later, a large number of studies seemed to prove this statement, typically identifying distributive justice with the content of the decision, i.e. was that favorable or unfavorable for the client.

Testing this issue I rely on the data of a questionnaire survey carried out on a 2003 person representative sample by Gallup Hungary in 2008.¹⁴ The survey aimed at assessing general customer satisfaction with administrative-regulatory public services. One question listed various aspects of public administrative activities and asked about the relative importance of these items. Respondents needed to name the first, second and third most important item from the list. Table 4. sums up the results.

¹³ As elsewhere I argued: "The perception that regulatory agencies systematically fail to enforce laws spreads over time in the society, exacerbating noncompliance and inducing a vicious circle where high level of noncompliance meets regulatory incapacity that exacerbates noncompliance, and so on. In the end, those following rules may be considered as 'losers', and breaking norms may become a norm itself." (Gajduschek, 2015, p. 122)

¹⁴ A similar survey was administered in 2005, and to the best of my knowledge, recently too but I could not obtain any information on the latter one and only the Report of the 2005 is available to me, whereas I could obtain the data file of the 2008 survey.

4. Table Importance of various aspects of the procedure¹⁵

Evaluation criteria	Value	Ranking
<i>simplicity of the procedure</i>	91	1
<i>short time to stay in queue</i>	67	2
cost of procedure, i.e. low administrative fees	57	3
expertise of the administrator	56	4
<i>keeping deadlines precisely</i>	31	5
<i>closing the case quickly</i>	30	6
<u>transparency</u>	29	7
<u>availability of information about the procedures</u>	20	8
<u>understandability of the procedure</u>	17	9
<u>politeness</u>	9	10
<u>lack of corruption</u>	8	12
<i>offices be easy to get to</i>	8	13
<i>office hours</i>	8	11
<u>nice office environment where procedure takes place</u>	5	14
<u>opportunity to appeal against the decision</u>	1	15

It may be difficult to assess how much the above elements are related to procedural and to distributive justice and furthermore how much they are considered relevant from the point of view of Tyler's theory. For instance, whereas the opportunity to appeal is considered a perhaps most important procedural justice element by lawyers, understandably, it plays hardly any role in Tyler's theory. Politeness, transparency, lack of corruption, on the other hand, are undoubtedly central issues in procedural justice as conceived by Tyler. I indicate in the table with underlining those items. Several other items may fit better to distributive justice, if that is interpreted here as the clients' utility maximizing attitude. Minimizing money "cost of procedure"¹⁶ is undoubtedly such an item. I consider also professional expertise of the administrator as such one. I indicated these items with bold letters. Some other items, such as "short time to stay in queue", "closing the case quickly" seem to be such items too but one may argue that these could be interpreted also as procedural items. There are some items that seem more as procedural elements (e.g. office hours) but one may argue that it could be understood from a utility maximizing point of view (e.g. no need to do leave at working hours). Items that were difficult to decide are indicated with italics.

It may be easy to see that elements that are identified with distributive justice are much higher on the list than procedural justice elements. Surely, items that are explicitly named by Tyler (e.g. Tyler, Jackson, & Bradford, 2014, pp. 4017–4018) and indicated with underlining are in the second half of the list of importance. Items indicated with bold based on my assessment, are on the first part of the list. I see a similar trend between items with italic. Namely, items that may rather be interpreted as

¹⁵ The „value“ data were calculated by taking into account how frequently an item was ranked on the first, second, third place and this value was then standardized to a 0-100 scale.

¹⁶ In the previous survey carried out in 2005 costs were far the most important item in a similar question.

ones related to distributive justice appear higher and those related more to procedural justice appear in the lower part of the list.

These data are far from decisive; still they may raise doubts about the ultimate generality of procedural justice as a panacea to inducing law-abiding behavior. Potentially, the state of the society, to a great extent the welfare of the society could be a key factor, somewhat similarly to Maslow's famous "theory of needs". While the theory has been widely and reasonably criticized for its uniform treatment of people, generally it could be accepted the physiological needs are first and all others come only after that. It may be accepted to the common sense that in a poverty stricken society where a lot, in extreme cases even survival of the client (think of developing countries), may depend on an administrative decision, the outcome may be more important than the procedure. It is true on the other hand, to refer now to Herzberg's two factor motivational theory, that this may not induce emotional identification with the authority. (Petri & Govern, 2013) However, it may induce law-abiding behavior, even if that is not via the socio-psychological mechanisms described by Tyler.

Conclusion

Above, I raised some general reservations regarding Tyler's theory emphasizing the role of procedural justice, the need of authorities' client oriented approach. Moreover, I questioned the approach that almost completely denies the role of deterrence (legal sanctions) in generating compliance. This theoretical part undoubtedly needs further improvement. The empirical part is only in an embryonic form, providing descriptive data on two issues: why people, in Hungary, obey the law in their own view and what is considered important in law enforcement, in regulatory-inspection agencies' activities?

Both on a theoretical level and with empirical data I argued that Tyler's theory may be less relevant in countries that

- a) have a different (civil law) legal system with all its structural and cultural consequences ;
- b) where the welfare of citizens is low and administrative decisions may have a large impact on their lives;
- c) the culture of society is largely different (e.g. more materialistic);
- d) the social experience is largely different (e.g. not that laws are strictly enforced but that they are generally not enforced at all).

REFERENCES

Becker, G. S. (1968). Crime and punishment: An economic approach. In *The Economic Dimensions of Crime* (pp. 13–68). Springer.

Elster, J. (2000). Rationality, economy, and society. In S. P. Turner (Ed.), *The Cambridge companion to Weber* (pp. 21–41). Cambridge: Cambridge University Press.

Friedman, L. M. (1975). *The legal system: A social science perspective*. Russell Sage Foundation.

- Gajduscsek. (2003). Bureaucracy: Is it efficient? Is it not? Is that the question? Uncertainty reduction: An ignored element of bureaucratic rationality. *Administration & Society*, 34(6), 700–723.
- Gajduscsek, G. (2008). *Rendnek lenni kellene: Tények és elemzések a közigazgatás ellenőrzési és bírságotási tevékenységéről [An Analysis of Law Enforcement in Hungary]*. Budapest: KSzK.
- Gajduscsek, G. (2015). Measuring Cross-Sectorial Law Enforcement Capacity of Regulatory Agencies in Hungary. *Transylvanian Review of Administrative Sciences*, 11(44), 108–125.
- Habermas, J. (1985). *The theory of communicative action, Volume 2: Lifeworld and system: A critique of functionalist reason*. Boston: Beacon Press.
- Inglehart, R. (1997). *Modernization and postmodernization: cultural, economic, and political change in 43 societies*. Princeton, N.J: Princeton University Press.
- Jackson, J., Bradford, B., Hough, M., Myhill, A., Quinton, P., & Tyler, T. R. (2012). Why do people comply with the law? Legitimacy and the influence of legal institutions. *British Journal of Criminology*.
- Kagan, R. A., Gunningham, N., & Thornton, D. (2011). Fear, duty, and regulatory compliance: lessons from three research projects. In C. Parker & V. L. Nielsen (Eds.), *Explaining compliance: Business responses to regulation*. Edward Elgar Publishing.
- Luhmann, N. (1995). *Social systems*. Stanford University Press.
- March, J. G., & Olsen, J. P. (2004). The logic of appropriateness.
- Merryman, J. H., & Pérez-Perdomo, R. (2007). *The civil law tradition: an introduction to the legal systems of Europe and Latin America*. Stanford University Press.
- Murphy, K., Bradford, B., & Jackson, J. (2016). Motivating Compliance Behavior Among Offenders. Procedural Justice or Deterrence? *Criminal Justice and Behavior*, 43(1), 102–118.
- Nagin, D. S. (1998). Criminal deterrence research at the outset of the twenty-first century. *Crime and Justice*, 23, 1–42.
- Petri, H. L., & Govern, J. M. (2013). *Motivation: theory, research and application* (6th ed). Belmont, CA: Wadsworth, Cengage Learning.

- Posner, R. A. (1985). An economic theory of the criminal law. *Columbia Law Review*, 85(6), 1193–1231.
- Pratt, T. C., Cullen, F. T., Blevins, K. R., Daigle, L. E., & Madensen, T. D. (2006). The empirical status of deterrence theory: A meta-analysis. *Taking Stock: The Status of Criminological Theory*, 15, 367–396.
- Schluchter, W. (1981). *The Rise of Western Rationalism: Max Weber's Developmental History*, transl., intro. by G. Berkeley: University of California.
- Silbey, S. S. (2013). Organizational Challenges to Regulatory Enforcement and Compliance: A New Common Sense about Regulation. *The ANNALS of the American Academy of Political and Social Science*, (649).
- Stigler, G. J. (1970). The optimum enforcement of laws. *Journal of Political Economy*, 78(3), 526–536.
- Twining, W. L., & Miers, D. (2010). *How to do things with rules: a primer of interpretation* (5th ed). New York: Cambridge University Press.
- Tyler, T. R. (1990). *Why people obey the law*. Princeton University Press.
- Tyler, T. R., Jackson, J., & Bradford, B. (2014). Procedural Justice and cooperation. In G. Bruinsma & D. Weisburd (Eds.), *Encyclopedia of criminology and criminal justice* (pp. 4011–4024). New York: Springer.

© György Gajduschek, MTA TK

MTA Law Working Papers

Kiadó: MTA Társadalomtudományi Kutatóközpont

Székhely: 1097 Budapest, Tóth Kálmán utca 4.

Felelős kiadó: Rudas Tamás főigazgató

Felelős szerkesztő: Körtvélyesi Zsolt

Szerkesztőség: Hoffmann Tamás, Kecskés Gábor, Körtvélyesi Zsolt, Szilágyi Emese

Honlap: <http://jog.tk.mta.hu/mtalwp>

Email: Kortvelyesi.Zsolt@tk.mta.hu

ISSN 2064-4515