

COMPLIANCE WITH HEALTH AND SAFETY LEGISLATION: IS DETERRENCE THE ANSWER?

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Laws are of little practical importance if people ignore them, therefore public compliance is central to the effectiveness of a law. An enforcing authority wishing to promote compliance must understand why people obey or disobey the law. Two contrasting theories have been suggested to answer this question -instrumental and normative. The instrumental perspective underlies deterrent theory, it suggests that compliant behaviour is influenced by tangible, immediate incentives and penalties which are used by the individual to judge personal gains and losses. The normative perspective, in contrast, is concerned with the influence of what people regard as just and moral and their individual attitude of why they should voluntarily follow legal rules. Health and Safety legislation within the construction industry adopts an instrumental perspective by imposing strict duties on all parties to a project with the threat of punishment for non-compliance. This paper discusses various instrumental, normative and also social control mechanisms which can be used to obtain compliance. It is recommended that the way forward is to integrate the concept of deterrence with normative controls such as legitimacy, morals, justice and fairness, and to include a variety of social control factors in order to achieve maximum compliance levels.

Keywords: Behaviour, compliance, deterrence, instrumental, legitimacy, normative.

INTRODUCTION

Construction is an inherently dangerous activity. The construction industry's safety record has continued year after year to have the highest fatality and major injury proportion rate of any industry in the United Kingdom (Health and Safety Commission 1995). An approach to construction safety has evolved over 160 years during which time legislation has been the major tool to improve the poor statistics. Within the construction industry the carrying out of health and safety precautions in line with legislation can often involve inconvenience, cost and time delays to those involved. The effectiveness of a piece of legislation has a direct relationship with the level of compliance of the targeted group. A piece of legislation can be implemented and enforced but it will have little or no effect unless the people within society at whom the law is targeted comply with the regulations and duties set down. It has been argued that 'the effectiveness [of legal authorities] depends on the extent to which they are able to influence the public's behaviour toward the law. Understanding why people follow the law is a central issue in law' (Tyler 1990: 161). Therefore compliance is a basic prerequisite for effective operation of legal authorities.

Implementing a successful compliance strategy is essential to achieving widespread conformity with a law. However, securing compliance is difficult because 'laws are passed and enforced to mandate behaviour that people would prefer to avoid, or to

discourage people from doing certain things that might benefit them' (Tyler 1990: 19). Regulatory agencies such as the Health and Safety Commission (HSC) face the problem of how best to achieve compliance. 'The agencies whose job it is to enforce these regulations face an enduring dilemma: is compliance best achieved by prosecution and punishing regulatory violations when they are detected, or is the best policy to persuade violators by means of education, exhortations, and warnings to bring their behaviour into compliance with the law' (Hopkins 1994). The question of whether to punish or to persuade is of great importance to compliance and is a feature within many areas of government regulation in modern society. The answer to this question is by no means simple and will have major - implications on the overall level of compliance.

Meier & Johnson (1977) suggest that there are two sources of compliance: (1) compliance produced by influences other than a legal threat, and (2) compliance produced by legal threats - deterrence. These two sources were also discovered by Tyler (1990) who referred to them as: (1) a normative perspective which states that compliance is produced through personal morality and feelings of a law being just, and (2) an instrumental perspective which underlies deterrence literature. In the UK construction industry the law relating to health and safety uses the latter approach to obtain obedience, financial - penalties and prosecution being the deterring factors. This tends to be viewed as the 'usual' procedure by many legal authorities who believe that 'the fact that sanctions are frequently imposed appears to imply that punishment works as a deterrent' (Crombag 1994). Hopkins (1994) comments that 'most literature assumes punishment serves to bring about compliance with the law. The possibility that punishment might actually encourage non-compliance is not one that would concern the pure retributivist but is certainly an issue in the debate about regulatory styles'. Furthermore, 'nowadays it appears to be *opinion chic* among lawyers that punishment does not work' (Crombag 1994).

This paper will consider various reasons and motivations as to why people comply with the law in an attempt to discover whether present UK health and safety legislation uses adequate techniques to secure high levels of conformity and to find any possibilities for improvement using alternative methods, thus creating a potential for improving health and safety on construction sites.

WHY PEOPLE OBEY THE LAW

To begin to understand what makes people comply with legislation it is necessary to explore the everyday behaviour of citizens toward the law and examine why people obey or disobey it. The instrumental perspective of the citizen underlies deterrence literature: people's behaviour responds to changes in tangible, immediate incentives and penalties and judgements about personal gains and losses. This is the perspective which dominates when legal authorities implement new laws. In contrast the normative perspective is concerned with the influence of what people regard as just and moral as opposed to what is in their self-interest. It also considers the connection between commitment to legal authorities and law-abiding behaviour.

Thus it would appear that there are two contrasting views about people that react to differing factors. As a result, obtaining compliance is a complex task, selecting methods which suit particular citizens. These contrasting theories of compliance will be used as a basis for considering why individuals comply with the law, what methods are presently being used and whether these can be improved. It will then be suggested

what step health and safety legal authorities within the construction industry should take to secure better compliance levels in the future.

THE DETERRENCE STRATEGY

General and specific deterrence

Many legal control methods are based on the assumption that behaviour is motivated by rewards and punishments in the external environment.

'The imposition of penalties for violation of laws has been traditionally justified for such reasons as social justice and retribution. Today the main justification for imposing severe penalties is that punishments serve as a specific deterrent to -future violations by the offender and as a general deterrent against violations by others who might be tempted to follow his lead'(Salem & Bowers 1972: 313).

Such a strategy is very appealing to political and legal authorities since very little effort is required to implement and enforce the laws. In health and safety legislation, punishment through penalties and prosecutions has a primarily deterrent function.

LIKELIHOOD OF BEING CAUGHT AND EXPECTED SEVERITY OF PUNISHMENT

The influence of deterrence upon compliant behaviour involves assessments by the individual of the likelihood of being caught, punished, the expected severity of punishment or a combination of both (Tyler 1990: 42). The degree of risk of detection and conviction is important for the preventive effects of law. If there is a small risk of being caught then the deterrent effect will be very small, irrespective of the severity of punishment. Past experience has shown that when enforcement is removed, crime rises (Andenaes 1974: 48). Silberman (1976) argues that 'effective enforcement of laws regulating more serious crimes will have a spill-over effect in securing conformity to laws regulating less serious crimes (which are more difficult to enforce) providing, that there is at least a minimum of public support in at least part of the community being regulated'.

Many pieces of research would dispute this and most studies fail to find a systematic relationship between severity of punishment and law breaking involvement (Silberman 1976). A study carried out by Paternoster et al. (1983) finds preliminary evidence which suggests that the perceived risk of punishment has a deterrent effect, while the perceived severity of punishment does not. This finding has been supported by other studies Silberman (1976), Andenaes 1974: 40, Bjornskau & Elvik 1992, Salem & Bowers 1972: 315). These findings are not altogether surprising, if there is only a small probability of being caught then the severity of the punishment will be largely irrelevant. One study found that when the severity of punishment was greatly increased the crime rate rose (Andenaes 1974: 16). This could be due to increased attention brought about by increasing the severity of the punishment on the law breaking activity. Also the magnitude of punishment will have little effect on 'crimes of passion', where the deterrent threat has no effect. However studies carried out by Meier & Johnson (1977) into the deterrent effects of law on marijuana use shows a contrasting result. Evidence indicates the opposite, that perceived severity of punishment has a strong deterrent effect, whilst perceived certainty of punishment shows essentially no effect on law breaking behaviour.

Hutter (1988: 71) found that the perceived social disgrace which might surround press coverage of court cases has a greater deterrent effect upon both the offender than the monetary sanctions which might be imposed. Evidence from studies carried out by Silberman (1976) show that the greater the degree of association with peers who have committed an offence the greater the degree of perceived threat of punishment, although this was only true for the individual level of analysis. This indicates that general deterrence has a positive influence on compliance for the individual but not at a company level. However, where social levels of disapproval are low, the deterrent effect is minimal or non-existent.

Deterrence does not always work

In some situations, compliance cannot be easily explained using the deterrence perspective. In both past and present societies citizens obey the law when the probability of punishment for non-compliance is zero, and break laws even when the risks involved are substantial. Neither of these behaviours are logical or make sense from an instrumental view. The belief in general prevention is based on rational choice theory. Citizens will abide by the law if the expected utility of law-abiding actions is greater than the expected utility of violations (Bjornskau 1992). Such models only consider people's reactions as a response to enforcement level and penalty size and does not consider individual behaviour. Empirical evidence showing that general prevention exists is lacking, yet it is the major justification behind the theory of deterrence. Thus, both the existence of general deterrence and its use as the basis for obtaining compliance are questionable.

It would appear that the present widespread use of deterrence theory through the use of punishment and rewards to obtain legislation can be questioned since there is little evidence of its effectiveness. Studies have reported that the effect of deterrence and perceived sanctions on criminal involvement are minimal (paternoster et al. 1983). As Andenaes (1974: 12) comments

'it is a common failing in legislation that laws are passed which cannot be enforced. Authorities resort to the threat of punishment when they want to channel citizens' actions. Legislators probably realise that many will break the rules, but reason that many will observe them, so something will be gained.'

It is likely that this deterrent style of achieving obedience is used out of habit and simplicity of implementation and enforcement.

NORMATIVE ISSUES

Legitimacy of authority and procedures

Normative issues are central to understanding the relationship between authority and compliance. Research carried out by Tyler (1990) involved interviewing citizens twice by telephone a year apart examining the relationship between changes in attitudes behaviours. He found that the legitimacy of leaders was directly related to compliance, that justice affects reactions to personal experience and that people think about justice in non-instrumental terms. Citizens comply because they believe the legal authority has a legitimate right to dictate their behaviour. Thus people accept that there is need to bring their behaviour into line, even if it conflicts with self interest. Factors influencing people's views on legitimacy require investigation. Many studies do support the hypothesis that behaviour is strongly influenced by legitimacy (Tyler 1990: 33), although data do not convincingly prove this. The strength of the Influence

of legitimacy on obedience will vary. Things such as peer opinions, morals, evaluation of how well authorities perform will probably influence the relation of compliance to legitimacy.

Individuals' reactions to government legislation have been shown to be linked to the fairness of procedures used to create a desired outcome (Tyler et al. 1986). However what is fair? This will depend upon personal traits and experience. There is no simple determination of fairness. People are influenced more by a just procedure than the actual outcome itself (Tyler et al. 1986, Tyler 1990). Studies carried out by Paternoster et al. (1983) found belief in a sanction to be the strongest influence of obedience with a law. However, many legal authorities are concerned with distributive justice theories, assuming compliance is achieved by a fair outcome, which is not the case.

MORALITY OF LEGISLATION

Compliance with legislation can be derived from a desire to behave according to one's own sense of what is morally right or wrong. Thus the morality can be a powerful tool in achieving compliance. There is a belief that the immorality of breaking a law will encourage compliance (Meier & Johnson 1977). However, law is not a suitable instrument for the enforcement of morality in all circumstances (Lee 1986: 12). A problem of compliance arises when an activity has little immorality associated with it. Experiences of similar regulations have shown that moral and social inhibitions against breaking the law are insufficient in themselves to ensure obedience when there is conflict with one's own private interests (Andenaes 1974: 11). Since personal morality will vary it would be useful for authorities to find out what influences morality.

Studies have shown that increasing instrumental control using deterrence can create a greater degree of moral commitment for the legal regulation (Silberman 1976). Boardman (1987) argues that the existence of legal standards, by itself, creates a *prima facie* moral obligation to follow those standards. It is probable that moral and social inhibitions against breaking the law will be insufficient to secure compliance since many precautions and procedures undertaken will not result in any accidents or hazards being avoided.

THE EFFECT OF SOCIALISATION ON COMPLIANCE

Influence of attitudes on obedience

Studies from psychology can be used to find out the psychological motivation behind individual's actions. Attitudes toward behaviour and compliance with legislation are a result of suggestive influences from society. Kelman (1958) carried out research showing that changes in attitudes and actions are produced by social influence. This research was carried out by giving college students one from a selection of four presentations which experimentally manipulated the source and degree of the communicators' power, while keeping the message constant. The subjects then responded with the extent of their agreement with the communicator. Three different processes of influence were identified: compliance, identification and internalisation. Compliance occurred when individuals accepted influence because they hoped to achieve a favourable reaction from another group or person. Thus satisfaction was derived due to the social effect of accepting influence. Identification occurred when individuals accepted influence because of desires to establish or maintain a satisfying

self-defined relationship to another person or group; satisfaction derived from the act of conforming as such. Finally, internalisation occurred when individuals accepted influence because the content of induced behaviour was intrinsically rewarding; satisfaction derived from the content of the new behaviour. These three processes highlight the different ways in which individuals accept social influence. Knowledge of these various psychological processes can assist legal authorities in understanding compliant behaviour, however, it may not be obvious which of these processes influence individuals.

Differential association and law breaking

The effect of social expectation and differential association (peer pressure) have large influences on behaviour. Salem & Bowers (1972) showed that a negative relationship existed between the climate of social disapproval of an action and its incident. The climate of disapproval has a deterrent effect on behaviour in two ways (1) the effect of individuals' own sense of disapproval, and (2) the effect of the normative feelings of others in the social context. Research carried out by Silberman (1976) took a sample of undergraduate students and tested respondents' Current beliefs regarding the efficacy of the law enforcement process and then investigated their past criminal behaviour. It was also found that the effect of differential association on law breaking behaviour was a positive function of conformity. Similar findings have been found in studies carried out by (Joule et al. 1988, Maass & Clark 1983 and Hutter 1988). Although studies carried out by Tyler (1990) into why people obey the law surprisingly found that differential association did not significantly influence behaviour. However, this may be because this piece of research was undertaken on crimes which lacked strong feelings of peer disapproval toward law breaking. Thus similar research is needed for more serious crimes to see if the results differ.

The use of differential association to acquire compliance within the construction industry may be utilised on an individual worker level, although it would be difficult from a commercial level since actions within companies are not readily known by their peers. Perceived public disgrace occurring from prosecution could potentially be a powerful source to ensure conformity. However, Current prosecution levels within the construction industry are low due to the huge number of construction sites and relatively low number of HSE inspectors. This tool could be used in the future by increasing prosecution rates and press coverage of prosecutions.

RELATIONSHIP BETWEEN DEMOGRAPHY AND COMPLIANCE

A study into the relationship between demography and law found that behaviour, age, sex, experience and formal training were all significant predictions of compliance, while education was not (Rutter et al. 1995). These results are confirmed in the Dedobbeleer & German (1989) study, where it was also found that the absence of a safety injury record and training exposure affected worker compliance with safety regulations. Studies into compliance levels and sex has shown that women are significantly less likely to initiate rule-breaking behaviour (Osman 1982), and appear to be influenced by peer involvement, not morality (Silberman 1976). The deterrent effect of the threat of punishment appears to be specific to men. Thus, it would appear that there are large behavioural differences between men's and women's attitudes toward compliance. However, this should be treated with great scepticism since

research which looks for differences between men and women will inevitably find many differences, hence the validity of such research can be questioned.

Demographic relationships may be useful in identifying potential individuals/situations where the risk of non-compliance is highest. Other social mechanisms which have been found to influence compliance include religion. Studies by Grasmick et al. (1991) revealed that affiliation with a fundamentalist denomination was linked to compliance with laws. This relationship was found to be positive in that religion has the affect of promoting compliance with laws. Studies by Milberg & Clark (1988) looked into the impact on people's moods on their compliance levels. It was found that more compliance took place among subjects in a happy mood than in a neutral mood and less when in an angry mood. Thus it would appear that focusing upon people's well-being can create and increase compliance.

CONCLUSIONS AND RECOMMENDATIONS

The present methods of ensuring compliance with health and safety legislation use instrumental influences upon individuals and organisations. It would appear that the legal threat is a relatively important source of compliant behaviour. The likelihood of being caught is more influential than the severity of punishment. Enforcing agencies can use this by increasing the chance of detecting breaches. In addition publicity surrounding prosecutions will act as a general deterrent. However, deterrence will not influence everyone's behaviour.

Presently, health and safety legislation places little importance upon normative compliance measures. Belief in the legitimacy of legal authorities is influential to compliance. Legislation should be fair, just and worthwhile. Also, effective 'marketing' of the legislation may help people to understand and relate to the law. Aspects such as respect, a good public profile and perceived successful performance may help authorities to acquire legitimacy.

The influence of socialisation upon compliance levels is strong, although it is rarely used by legal authorities. This is not unexpected since trying to harness social control is difficult because people's attitudes vary significantly and over time. This requires a good understanding of the psychology of the people being controlled. Socialisation takes many years. The use of social control should not be disregarded simply because of these difficulties. It can help legislators target compliance. Differential association has a major influence upon compliance. These problem areas they can targeted by training and enforcement in the relevant areas. Further research into identification of social factors and how they can be used as a tool for increasing compliance is needed to maximise the potential gain of social control.

An appropriate policy for legal authorities appears to involve the use of both punishment and persuasion, depending upon the circumstances. The initial response should be one of persuasion, but as soon as resistance is encountered the authorities must be willing to escalate their response.

Much of the reported research was carried out by psychologists in 'controlled' experimental conditions. Additional research is necessary to discover whether these findings would recur in real life.

It is recommended that the way forward for health and safety legislation in the construction industry is for the HSC to maintain the concept of deterrence and integrate it with principles associated with normative control such as legitimacy,

morals, justice and fairness. Also a variety of social control and social influence factors should ultimately be included. Is a general model the answer?

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