Public Governance, Administration and Finances Law Review

ISSN 2498-6275 (print)
ISSN 2786-0736 (online)

2.
2022

Public Governance, Administration and Finances Law Review

Vol. 7. No. 2. 2022

LUDOVIKA
UNIVERSITY PRESS

Published by the University of Public Service
Ludovika University Press
Ludovika tér 2. 1083 Budapest, Hungary
Responsible for publishing
Gergely Deli, Rector
Copy editor
Zsuzsánna Gergely
Printed by the University of Public Service
ISSN 2498-6275 (print)
2786-0736 (online)

Contents

DOI: 10.53116/pgaflr.2022.2.1

Social Legal Consciousness or Legal Culture?

István H. Szilágyi*

* Full Professor, Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Department of Legal Philosophy, e-mail: h.szilagyi.istvan@jak.ppke.hu

Abstract: In contemporary legal sociology research, legal culture and legal consciousness are often used as synonymous or closely related, overlapping concepts. The aim of this paper is to elucidate the possibility of separating the two concepts through a more in-depth analysis. The first part of the paper explores the ideological-historical connections between the two concepts and argues that the conceptual confusion between legal culture and legal consciousness that characterises contemporary legal sociology occurred in the 1970s in American legal scholarship. The concept of social legal consciousness is first discussed in the context of conceptual analysis. After a general definition of legal consciousness, the components of individual legal consciousness, the factors and mediating structures linking individual and social legal consciousness, and finally the theoretical issues of conceptualisation are discussed. The second part of the conceptual analysis focuses on the concept of legal culture. The difficulties of defining the concept are taken into account, starting from a review of the academic debate surrounding the work of Lawrence Friedman. The concept of legal culture is constructed on the basis of the criteria for conceptualisation derived from this. The core concept is culture, and the distinguishing feature is a sociological concept of law. Next, it introduces the distinction between lay and professional culture and examines the extent to which the concept of legal culture thus outlined meets the criteria set out above. The paper concludes by summarising the rationale and yields of the conceptual analysis, highlighting the dynamic relationship between legal culture and social legal consciousness.

Keywords: legal consciousness, individual legal consciousness, social legal consciousness, legal pluralism, culture, sociological concept of law, lay legal culture, professional legal culture

1. Introduction

Some of the concepts that appear in the following analysis – for example, the idea of social control, legal culture or legal pluralism – were formed during my legal anthropological research in the 1990s (Fekete, 2021, pp. 11–14). More closely related to my arguments are the insights that have emerged in the course of theoretical and empirical studies of the Hungarian population's legal consciousness over the past decade (H. Szilágyi, 2018). I am especially indebted to Balázs Fekete and György Gajduschek – members of the Research Group for Legal Sociology at the Faculty of Law and Political

Sciences of Pázmány Péter Catholic University – for their professional and collegial cooperation in subsequent interdependent research projects, and for the research fellowship of the Eötvös József Research Centre.[1] However, the earlier version, which is the immediate predecessor of this thought train, was the result of a project organised and led by László Kelemen (H. Szilágyi et al., 2022, pp. 6–36). Partly because this was presented at the international conference *Hungarian Experiences,*[2] and partly because Hungarian legal sociology has an unbroken tradition of legal research going back to the mid-1960s (Fekete & H. Szilágyi, 2017), I will make regular reference to the results of Hungarian research throughout the paper.

The starting point of the study is to establish the state of affairs that in contemporary empirical sociological research on law, legal culture and legal consciousness are often presented as synonymous or closely related, overlapping concepts. In my view, however, the phenomenon captured by the two concepts can be clearly separated through a more in-depth analysis. The root of this conceptual ambiguity can be brought to light by exploring the ideological-historical connections, and therefore in the first part of this paper I will briefly outline the history of the two concepts and argue that the conflation of the two concepts occurred in American legal scholarship in the 1970s.

The concept of social legal consciousness is then discussed first. In this context, I will first try to define the concept of legal consciousness, then I will discuss the components of individual legal consciousness, the fields of influence and mediating structures linking individual and social legal consciousness, and finally I will consider the conceptual issues of conceptualisation.

In the second part of the conceptual analysis, I will look at the concept of legal culture. The starting point for taking stock of the difficulties of defining the concept is a review of the academic debate that has developed in the wake of Lawrence Friedman's work, published almost half a century ago. Bearing in mind the conceptual criteria drawn from this, I will attempt to construct a concept of legal culture by outlining a concept of culture as a stem and a sociological concept of law as a distinguishing feature. I will then introduce the distinction between lay and professional culture and examine the extent to which the concept I have sketched meets the criteria I have previously set out.

The conclusion of the paper summarises the meaning and implications of the conceptual analysis, highlighting the dynamic relationship between legal culture and social legal consciousness.

[1] Theoretical and methodological issues of legal consciousness research in Hungary. Senior Research Fellowship, Eötvös József Research Centre, 2020.

[2] Hungarian Experiences. Theoretical and Methodological Issues of Sociological and Empirical Comparative Research of Legal Consciousness (12–13 May 2022). Research Group for Legal Sociology, Pázmány Péter Catholic University, Budapest.

2. The concept of legal culture and legal consciousness from a historical perspective

The conception of law as a cultural phenomenon dates back to the beginning of the 19th century, in the two strands of the historical school of law that emerged in the English and German traditions – as a reaction to the rationalism of the French Enlightenment – which emphasised the concept of culture over civilisation. The two were linked by an insistence on the historicity of law and the idea of the spontaneous, organic development of law, as well as an interest in the early stages of legal development. While Friedrich Carl von Savigny (Savigny, 2002) was the founding master of the German school, Henry Sumner Maine (Maine, 1861) can be considered the founder of the English school.

Both branches of the historical legal school had a significant influence on the cultural anthropology that developed in the second half of the 19th century, and within it, on legal anthropology. However, the English school of social anthropology – which, from Bronislaw Malinowski (Malinowski, 1926) through Isaac Schapera (Schapera, 1938) Max Gluckman (Gluckman, 1965), Philip Hugh Gulliver (Gulliver, 1963) and Simon Roberts (Roberts, 1979) had an unbroken line of legal anthropology until the 1980s – was early influenced by French sociology, especially the work of Émile Durkheim (Leach, 1982), and thus the concept of culture was relegated to the background. In the United States, however, the cultural anthropology school established by Franz Boas (Boas, 1911; 1940) continued to preserve the original German approach to the concept of culture. The study of legal phenomena also quickly attracted the interest of American cultural anthropology, as shown by the distinguished masters of legal anthropology in the period from the 1930s to the 1980s: Edgar Adamson Hoebel (Lewellyn & Hoebel, 1941; Hoebel, 1951), Paul Bohannan (Bohannan, 1957), Leopold Pospíšil (Pospíšil, 1958), Sally Falk Moore (Moore 1973; 1978) and Laura Nader (Nader, 1969; 1990), to name but a few.

The influence of the German historical legal school was decisive for the legal ethnology founded at the end of the 19th century by Albert Hermann Post (Post, 1886) and Josef Kohler (Kohler, 1885). However, ethnological jurisprudence should be mentioned primarily because of its significant influence on the legal ethnography that was developing in Central Europe, including Hungary (Fekete, 2021, pp. 2–10; Bognár, 2016), at the beginning of the 20th century. In the period between the two world wars, the movement lost momentum in the stifling atmosphere of nationalism and then Nazism, and the new generation of researchers emigrated to the United States and integrated into the scientific community there (Schott, 1986).

The Dutch *adat* law school, the third major school of legal anthropology (Griffiths, 1986a), pioneered by Cornelius van Vollenhoven and Barend ter Haar (Haar, 1949), was more successful during this period. After World War II, research, which had been interrupted in the 1940s, was resumed with the work of major authors such as Geert van den Steenhoven (Steenhoven, 1962), Fons Strijbosch (Strijbosch, 1985), Kebet and Franz von Benda-Beckman (Benda-Beckman & Benda-Beckman, 2007), John Griffiths (Griffiths,1986b) and Agnes T. M. Schreiner (Schreiner, 2003; 2019).

From the late 1940s onwards, academic interaction between the three main schools of legal anthropology – English, American and Dutch – was intensified. Over the next three decades, a series of new theoretical concepts – e.g. legal pluralism, social control, semi-autonomous social field theory – and methodological considerations emerged in legal anthropology.

The 1970s were a critical period in the history of anthropology: the disintegration of former colonial empires accelerated, and former colonies gained independence, which led anthropologists to "return home". As a result, in the 1980s, a succession of departments and research centres for "socio-legal studies" were set up, in which anthropologists worked together with sociologists, and the theoretical import of legal anthropology contributed greatly to the renewal of the sociology of law. Part of this was that anthropologists brought with them the concept of culture, as opposed to the structural-functional or systems-theoretical approach that dominated legal sociological thinking of the time. This effect was further enhanced by the fact that the "linguistic turn" in philosophy was also beginning to make itself felt in social research. It is this intellectual context that explains the interest in Lawrence M. Freedman's *The Legal System,* published in 1975, to which we generally associate the renaissance of the concept of legal culture up to the present day.

In European jurisprudence, the concept of legal consciousness also appeared at the turn of the 19th and 20th centuries. Kohler, arguing for the universality of law – its existence in all societies without historical or geographical limits – stressed that the universal psychological basis of law is the sense of law (Recthsgefühl) that operates in every human being. This psychological aspect was the basis of Leon Petražycki's sociological theory of law, who believed that law is the result of "legal experiences" built up from emotions and psychological impulses (Podgórecki, 1981). Adam Podgórecki, a disciple of Petražycki, operationalised this idea in the mid-1960s for the KOL research he initiated and organised, in which he separated the elements of legal knowledge and of opinions and attitudes towards law within the range of individual psychological factors determining legal compliance. In addition to German, Dutch and American researchers, this research project also involved Polish and Hungarian sociologists of law (Podgórecki et al., 1973). Although Podgórecki was later forced to leave Poland because of his "anti-communist academic activities" (Clark, 2007), the concept of legal consciousness nevertheless became accepted in European Marxist legal theory and sociology of law. At the same time, it quickly found its way to legal sociologists who joined the "critical legal studies" (CLS) movement, which was taking shape in American jurisprudence in the second half of the 1960s and was partly Marxist and neo-Marxist in inspiration.

The coexistence and conceptual confusion of legal culture and legal consciousness thus occurred in American jurisprudence, as functionalism and systems theory eclipsed the cultural approach to law in Western European sociology of law, and socialist jurisprudence, based on orthodox Marxism, rejected the concept of legal culture until the 1980s.

3. The concept of legal consciousness

Legal consciousness is an empirically analysable set of individual and group psychological factors directed towards legal culture. It is a specific configuration of psychological and social psychological phenomena – knowledge, opinions, attitudes, prejudices, impulses, skills and abilities – that form a mentality about law at the group level.

In the definition of a legal consciousness, we have combined individual and group psychological phenomena, which are discussed separately below.

3.1. Individual and social legal consciousness

The distinction between the individual and the social level of legal consciousness – with regard to the conceptual framework of the prevailing Marxist social science, and more specifically of Marxist legal theory – was developed in the 1970s by Hungarian legal sociology (Sajó, 1976),[3] which partly explains why the "social" as opposed to the individual remained to a certain extent undefined. The reason for this was that, although it was clear to researchers that social stratification was of great significance in the conditions of socialist society, the image of a "classless society" desired at the level of political ideology, as well as the actual political practice of destroying traditional communities and preventing the spontaneous formation of groups, both tended to equate the concept of the "social" level with the "overall social", i.e. state level. The separation of the individual and the social level thus implicitly implied that the individual was directly linked to the state, which represented society, without any further intermediary group. In fact, researchers were already aware at the time of the oversimplification of this conception of the individual's relationship to society as the most comprehensive group.

With regard to the social level of legal consciousness, we must see that legal consciousness at the social level is related to the institutional layer representing the (political) community as a whole – which we usually identify with the state or the government – in a different way than individual legal consciousness is related to the individual as a social and psycho-physical reality. In contrast to the individual's relation to his own legal consciousness, the state is by no means the exclusive bearer and shaper of social legal consciousness. While the individual's legal consciousness can in principle be reconstructed from the behaviour of the individual, the "activity" of state bodies cannot be used to infer the legal consciousness of society in all its aspects, since the latter encompasses a much broader phenomenon and is much more complex in relation to the institutional layer identified as the state.

[3] In fact, "socialist legal sociology" existed only in Hungary and Poland, because in the other socialist countries legal sociology could not become institutionalised at that time (see Fekete & H. Szilágyi, 2017).

3.2. The structure of individual legal consciousness

Historically, the separation of the categories of legal consciousness and legal knowledge in the study of individual legal consciousness was first developed in legal consciousness research in the 1960s and 1970s (Kulcsár, 1967; Podgóreczli et al., 1973). In further analysis, this distinction will be linked to traditional psychological concepts describing the structure of the individual psyche.

In the conceptual relation between legal consciousness and legal knowledge, the former is the more comprehensive category, and legal knowledge is thus a component of legal consciousness, which can be related to the cognitive (conscious, rational, intellectual) sphere of the individual psyche. It is also to a certain extent a residual category, because it includes all the other psychological aspects not covered by legal knowledge: in particular the emotional and volitional elements, which belong to the affective (subconscious, emotional) or reactive part of the psyche. In what follows, we will therefore review the intellectual (a), emotional (b) and volitional (c) aspects of legal knowledge, and finally we will examine the problems of the structure of legal consciousness (d).

Ad (a). The notion of knowledge of the law must certainly be interpreted more broadly here than knowledge of the rules of positive law, since "understanding the law" and "the ability to use the law as a tool" also presuppose some knowledge of the dogmatic layer. From the very beginning of the KOL research, the starting point was that knowledge of the law is neither a necessary nor a sufficient condition for compliance with the law, although knowledge of the law is clearly an indispensable element of legal competence. Empirical studies have revealed that lay people's knowledge of the law is generally low (Aubert, 1963; Black, 1973; Valverde, 2003) – certainly much lower than the principle of *ignorantia iuris non excusat* proclaimed by lawyers is not to be regarded as a mere fiction justifying legal responsibility – and varies from one area of law to another. The rules of criminal law are generally the best known, while those of administrative and civil law are much less so. Similarly, lay people are more familiar with substantive rules than with procedural rules. The social factors that most influence legal knowledge are literacy (education) and the amount of legal experience – while differences such as age, gender, income or "media consumption" do not or only to a small extent.[4]

However, legal knowledge does not cover all the elements of the cognitive sphere that can be associated with law, since it also includes, obviously, the patterns of prejudices and attitudes that are not rationally controlled on a case-by-case basis, but which can become the guiding principles of legal or legally relevant actions. Of course, their examination is also an integral part of the KOL research.

Finally, there is the very general question of the extent to which reason, conscious and rational deliberation can be regarded as a determinant of individual action. As we know, the modern legal doctrine's conception of man is based on this very premise, and sees the citizen as being able to know the legal rules, to adapt his actions to them and, in general, to rationally calculate the consequences of his actions. Perhaps the closest approach to this

[4] These findings have also been confirmed by Hungarian legal knowledge research (see Kulcsár, 1967; Gajduschek & Fekete, 2015; Hollán & Venczel, 2019).

conception is that of rational choice theory, while the social-psychological approach emphasises that people follow the law much more often than rational deliberation would indicate that it is "worth" for them to do so (Tyler, 1990).

Ad (b). In the problem of the emotional attitude towards law, the first question that arises is whether there exists in the human soul a sense of justice or a specific sense of right. The traditional conception of law answers the question in the affirmative, and for example, at the end of the 19th century it seemed to Joseph Kohler to be evident that the "sense of right" (Rechtsgefühl) was an absolutely essential element of the human mind (Kohler, 1885; Schott, 1982). This idea was, however, eclipsed in the second half of the last century by the concept of instinct reduction in psychology, which saw the human psychological character as being unspecialised and denied the existence of an instinctive impulse that could be identified with a sense of justice (Gehlen, 1987; Berger & Kellner, 1965). In the light of Konrad Lorenz's research in the 1970s, however, this problem can be reconsidered (Lorenz, 1974).

It is then worth examining how feelings such as "respect", "loyalty", "trust" or even "fear" and "anxiety" are expressed and interpreted in relation to law. In the last decade, theoretical and sociological research on this problem has increasingly drawn on recent findings in neuroscience. Indeed, a separate interdisciplinary field of research (law and emotions) is slowly taking shape in international research. The research of András Sajó, who has studied how legal (constitutional) "public sentiments" emerge from individual moral emotions in interaction with legal and political institutions, is very instructive in this respect (Sajó, 2010).

Ad (c). The traditional legal doctrine has tended to explain non-compliance or unlawful conduct by a "defect of the will". One important issue that arises when examining the psychological element of will is the problem of "force". The ability to use the law as a means to achieve individual goals – legal competence – includes, in addition to the element of knowledge of the law, the willingness to engage in conflict. This link seems to be supported by some of the results of Hungarian legal consciousness studies conducted in the 1970s. Researchers have used PFT (Personal Frustration Tolerance) tests to investigate how individual frustration tolerance is related to the degree of tolerance of deviant behaviour. The results showed that individuals with higher frustration tolerance were generally more intolerant (more likely to act against deviant behaviours) (Sajó et al., 1977). The everyday experience also highlights the problem that conflict tolerance and willpower also change with age: older people tend to avoid conflict and their willpower gradually softens. An interesting contribution to the study of the problem of "weakness of will" is a development in rational choice theory, which analyses how rational foresight can be used to overcome this psychological difficulty (the so-called "Odysseus problem") (Elster, 2015, pp. 99–113).

It should also be mentioned that in the course of empirical research on legal consciousness, researchers have developed a number of concepts based on some combination of the traditional concepts of individual psychology – distinguishing between cognitive, reactive and emotional aspects of personality – in an attempt to refine the exploration of the components of individual legal consciousness. When studying the process of legal education, the concept of "legal understanding" was used in connection

with the notion of legal knowledge, which mixes the conscious elements of explicit knowledge of the law with the emotional, instinctive impulses of a sense of justice. The ability to evaluate is highlighted as a psychological factor in its own right in the study of the role of values in the relationship to law. This evaluative moment refers to a specific combination of cognitive and emotional elements of consciousness. Very frequently used concepts are also "attitude" and "prejudice" (Vidmar, 1997; Fox, 1999; Riesman, 1999; Sapiro, 2001; Amand & Zamble, 2001), which are also defined in social psychology as a combination of cognitive, emotional and reactive elements (Allport, 1935). The "ability to use the law", which is highlighted as a separate component of legal consciousness, alongside legal knowledge and attitudes towards the law, implies evaluative and volitional components in addition to legal knowledge. In analysing the sense of entitlement, three components have been identified: "legal alertness", "ability to identify the law" and "legal mobilisation" (Fekete, 2019; Fekete et al. 2022). The first of these concepts is similar to "legal awareness", the second to "legal knowledge" and the third to the "ability to use the law".

Ad (d). Already after the first wave of KOL research, researchers concluded that a single, more or less coherent set of beliefs and motives about law does not emerge in individual consciousness (Berkics, 2015a; Berkics, 2015b; Gajduschek, 2018). Individual legal consciousness is thus fragmented, knowledge, evaluations and emotional attitudes towards law are full of internal contradictions and therefore do not form a single dimension of consciousness, so that attitudes towards law are strongly linked to the social context.

We should also be aware that the fragmentation of the structure of individual legal consciousness, aggregated at group or societal level, produces sociologically describable and measurable patterns. The study of these patterns opens up the horizon of analysis of individual legal consciousness to social legal consciousness, legal culture, and social history and legal history research.

3.3. The relationship between individual and social legal consciousness

In the system of relations linking the individual to society, we can distinguish three fields of influence from society to the individual: socialisation (a), communication (b) and the application of law (c). Among the effects from the individual to society, we should again distinguish the fields of communication (d) and the fields of legally relevant social actions (e) and explicitly legal actions (f). At the societal level, we must distinguish between the institutional layer (g) and the social legal consciousness (h).

Ad (a). The concept of socialisation as used in social psychology is applied here in a somewhat narrower sense. On the one hand, we disregard the essentially interactive nature of the learning process, i.e. the feedback of the behaviour of the educated on the educator during the process of education. On the other hand, although, as the concept of lifelong learning is being adopted in social psychology, researchers are paying increasing attention to the adult stage of social learning, and to the problems of re-socialisation and "re-education", the first stage of socialisation, which ends with the development of a solid individual identity at young adulthood, is relevant to legal socialisation. This latter

consideration is based on the fact that the adult stage of legal socialisation is essentially characterised by the accumulation and processing of knowledge and experience of the law in the cognitive sphere of the personality, which, however, is highlighted in our proposed model by the specific reference to the impact of social communication and the application of the law.

The process of legal socialisation in the phase of social education up to the acquisition of identity is not clearly distinct from other aspects of education. Especially in the early period from birth to puberty, during which the emotional and volitional elements of the personality are formed in relation to the various social manifestations of authority and rules. In the period following puberty, the cognitive sphere gradually becomes dominant in the course of personality development, and in parallel, knowledge of legal authorities and laws becomes increasingly differentiated and enriched, while emotional and moral attitudes towards them become more reflective and critical. Whilst the family is the most important agent in the early stages of socialisation, later on it is school, peer groups and, nowadays increasingly, the media that have a decisive influence.

In social psychology research, attempts have been made to interpret and empirically explore the phenomena of socialisation on the basis of two basic theoretical approaches. In the 1970s, the "cognitive development" movement, based on the work of Jean Piaget (Piaget, 1932; Piaget, 1936), was founded on the research of Lawrence Kohlberg and June L. Tapp (Tapp & Kohlberg, 1971). It was also around this time that the theory of "social learning", coined by Ronald L. Akers and Albert Bandura (Bandura, 1977; Akers, 1998) was formed. While the former emphasised the internal dynamics of cognitive development, the latter stressed the importance of external, social influences in the theoretical model of socialisation. The "integrated approach", developed in the 1980s in the mediation between the two approaches and the combination of their elements, was first elaborated in the works of Ellen S. Cohn and Susan O. White (Cohn & White, 1990).

Over the past half century, legal socialisation researchers have explored a number of concepts and theoretical frameworks aimed at theorising the phenomenon of legal socialisation, and have conducted a wide range of empirical research that has produced important results for legal policy and practice.

Among the former, we can refer to the conceptual separation of the cognitive aspects of legal knowledge and "legal reasoning" from emotional motivations and evaluative attitudes and the ability to use the law (legal competence). We can also mention theoretical constructs that explore the phases and the internal complexity of the development of legal knowledge and the nature of the interactions between agents and subjects of education (Kourilsky-Augeven, 1997; Kourilsky, 2000; Vari-Szilagyi, 2004; Fagan & Tyler, 2005; Trinker & Tyler, 2016).

Empirical research topics of practical relevance include, for example, the results of studies on the development of legal understanding and legal competence, which can provide ammunition for legal policy debates on setting the age of criminal responsibility and the inclusion of minors in legal proceedings (e.g. as witnesses) (Peterson-Badali & Abramovitch, 1992). The results of a study on the role of schools and the media in the development of legal knowledge and attitudes towards the law are also instructive and could be used to improve curricula and broadcasting policies to promote legal education.

Ad (b). As regards the dimension of communication from the social level towards the individual, we note that the other direction of interaction – from the governmental level: feedback – has been separated in the analysis (d). In the context we are now considering, we are thus thinking primarily of the flow of information on the law sent by state institutions to citizens through the various channels of mass media. In terms of content, this covers a very wide range of knowledge about the law, from the promulgation and publication of specific legal rules, to the accessibility of court decisions, to information on the organisation and functioning of the legislative and judicial bodies. From the point of view of the communication process, the well-known problems of indirect and one-way communication arise in ensuring access to legal information – as a condition of the rule of law and legal certainty, as a means of legal education and possible "legal propaganda" – in the selection of information and even in the examination of the possibility of disinformation and manipulation. Moreover, these issues take on an even more complex form in the context of the information structures and mechanisms of action of the various media: print, radio, cinema (Machura & Robson, 2001), television, social media, etc. Particular attention should be paid to the impact of the Internet social media (Facebook, Twitter, etc.) on legal communication, which have been developing at a rapid pace in recent decades. On the one hand, because of their interactive nature, unlike traditional media, and on the other, because they also function as an "alternative" public sphere to the "official" one (Burkell & Kerr, 2000; Black, 2002; O'Day, 2004).

However, the element of communication is present in some form in all the aspects we have highlighted. For example, in legal education, the media appears as an essential agent. Communication between parties is also an important element in the application of the law, as is the expression of individual opinions and individual legal actions or legally relevant other social actions. In view of this consideration, it becomes clear that the empirical research we are now highlighting is only a narrow field within the broad field of theoretical and empirical research exploring the role of communication in law.

In the 1960s and 1980s, the work of Jürgen Habermas (Habermas, 1984; Habermas, 1987), Niklas Luhmann (Luhmann, 1989; Luhmann, 1992), Günther Teubner (Teubner, 1993), Jacques Derrida (Derrida, 1978) and Jean Baudrillard (Baudrillard, 1970; 1994; 2000), among others, brought the phenomenon of communication to the forefront of European social theory. In the 1990s, David Nelken sought to synthesise this European social theoretical tradition with the new trends in Anglo-Saxon jurisprudence that had been emerging since the 1980s, in particular "law and language" (Goodrich, 1990; Gibbons, 1994; Tiersma & Solan, 2012), "law and semiotics" (Jackson, 1985; Kevelson, 1988; Jackson, 1994; Wagner & Bhatia, 2009) and "law and literature" (White, 1973; Aristodemou, 1993; Duxbury, 1995; Ward, 1995), in order to define the field of research on "law as communication" (Nelken, 1996). However, the impact of these social and legal theoretical developments on empirical sociological research on law was only felt after decades of delay, and often more through detours of methodological considerations. Thus, the empirical study of the social communication of law within the sociology of law was part of the theme of the KOL research, the theoretical background of which was the mid-level theories of contemporary political sociology, social psychology and communication theory.

Ad (c). The "counterpart" of the application of law is the field of individual legal actions (f), and the two together cover the field of law fulfilment in the traditional sense – the application and compliance of law. The scope of enforcement thus covers primarily ex officio actions initiated by public authorities, while individual, citizen-led enforcement is included in the scope of individual legal actions. In a very simplified way, the former includes administrative, law and order, law enforcement and criminal justice activities, while the latter includes private law actions and the operation of civil justice. On a closer look, it is clear that in modern legal systems there are a number of institutions and procedures in which ex officio official action is closely linked to individual acts of enforcement. This is evident, for example, in the case of administrative licensing procedures or the operation of various mediation and conciliation forums. Thus, the separation between the application of law and individual legal actions can only be relative.

In the last decades of the last century, KOL research has confirmed the assumptions of traditional doctrine by empirically demonstrating that legal experience in the application of the law has a significant impact on both the level of individual legal knowledge and the perceptions of the law (Sarat, 1990; Reifman, 1992; Savelsberg, 1994; Cooper, 1995; Sampson & Bartush, 1998). Two theoretical approaches to understanding the impact of the application of law on individual legal knowledge have emerged and continue to be influential today. One is the economic analysis of law, of which Richard Posner (Posner, 1983) is perhaps the best known representative. The more comprehensive theoretical background of this tendency is provided by the theory of rational decisions. The description and evaluation of the functioning of the application of law is based on the simple thesis that the application of law with sufficient predictability and efficiency makes it "cheaper" to follow the law and "more expensive" to break the law or to avoid it. The best known authority of the other approach, based on social psychology, is Tom R. Tyler (Tyler, 2006; Tyler, 2010). From this perspective, the role of the application of law in influencing the individual's sense of justice can be seen in the strengthening or weakening of the respect and trust in the law – legitimacy – that has been developed in earlier stages of socialisation. While the economic analysis of law focuses on the system of sanctions in the context of the application of law, which makes illegal or evasive behaviour costly and therefore undesirable from the point of view of rational consideration, the social psychological approach emphasises the justice of the application of law, but also the importance of procedural justice and fair play.

In addition to the research inspired by these two essentially macro-level theories, we must also remember the efforts that draw mainly on developments in legal anthropology, which developed in the United States in the 1960s and 1980s in the wake of the work of Sally Falk Moore and Laura Nader (Moore, 1973; Nader, 1990). The focus of this research is on understanding how legal experiences are created in the course of the application of law, and concentrates on a micro-sociological analysis of the functioning of legal forums as "semi-autonomous social fields".

Ad (d). In order to take into account the effects from the individual to the social level, we must first consider the phenomenon of individual communication. This requires distinguishing between what people think and say and how they act. Individual expressions about the law do not necessarily reflect what a person really thinks about the law,

and even less can be inferred from how he or she will act in a given situation. This insight leads to two important conclusions about individual expressions of rights.

One is that by communicating an opinion on law, which necessarily involves some proportion of the elements of substantive knowledge of law and of evaluation of law, the individual enters the sphere of social existence, i.e. individual legal communication has political implications. By formulating and expressing an opinion on law, the individual enters into the process of public opinion flowing, in the terms of Gabriel Almond and Sydney Verba, "upwards" from the citizen to the government, and becomes part of the shaping of political culture (Almond & Verba, 1963). The close link between legal consciousness and political culture is thus already clear at the level of individual communication.

On the other hand, the above considerations should also lead researchers to a kind of methodological caution: it is not necessarily reliable to ask the opinion of the person under study alone, without trying to observe his or her actual behaviour, in order to study individual legal consciousness.[5] Hence the particular importance of micro-sociological studies in this area. This conclusion is also supported by taking into account the interactive nature of communication at the individual level, since when examining discourse at the "ground floor" of social life, we cannot ignore the structural elements that provide the context – social stratification and group formation, organisational forms, social fields (O'Barr & Conley, 1988; Sarat & Kearns, 1993; Reisman, 1999; Ewick & Silbey, 2003).

Ad (e). Among the legally relevant social actions, it is worthwhile to distinguish at the outset between illegal conduct and actions aimed at avoiding the law. The forms of violations and, more importantly for the study of legal consciousness, the motivations behind them can be very diverse. At one extreme, there is the case of civic disobedience, a conscious, politically or morally motivated, open (but non-violent), demonstrative defiance of the law. At the other extreme, there may be cases where the cause of the infringement is simply a lack of knowledge of the law *(ignorantia iuris)*. These include the complex mass of infringements resulting from "alienation from the law", from rational deliberation, from emotional influence, from the "error of intention" or "error of will", or some combination of these, which the liability systems of the various branches of law seek to systematise at the dogmatic level.

Marc Hertogh attempted to create a mid-level theory to account for the cognitive factors behind violations (Hertogh, 2018, pp. 49–64), but apart from this, the KOL studies have been based on some derivatives of the previously presented theoretical directions of obedience to law – social psychological and rational choice theory – and adapted to the responsibility system of each branch of law. Criminology naturally plays the leading role in this research (Fickenauer, 1995; Anderson, 2000; Akers & Jensen, 2006; Vigh & Tauber, 1988; Kerezsi, 2006), given its moral and political weight, and the empirical exploration and analysis of the motives for offences receives much less attention in the fields of civil and administrative law.

[5] This problem is particularly acute in survey-type questionnaires: the respondent does not answer what he or she thinks about a particular question, but what he or she thinks is generally "expected", "politically correct", etc.

As far as law avoidance behaviour is concerned, it is essentially the individual's attempt to seek other means of conflict resolution rather than the law. Some of these are mediation and conciliation forums operating in the "shadow of the law" (Mnookin & Kornhauser, 1979), others are community or group-level institutions (Loss, 2001), largely or entirely independent of state law, with little formalisation, traditional procedures or specific patterns of social practice.

The study of conflict management mechanisms and procedures that are functionally equivalent to state law, and the motives of those who use them, has traditionally been of interest to legal anthropology. It was transferred to the sociology of law in the 1980s as the subject of "informal justice" (Faber & White, 1994; Morrill, 2017), which was then supplemented in the following decade by research on the development of conciliation or mediation procedures and institutions operating "in the shadow of the law" (restorative justice) (Edgar & Newell, 2006; Miller, 2008; Barabás, 2011).

Ad (f). The scope of legal actions can again be divided into two parts. On the one hand, there are cases of "passive" compliance with the law, and on the other hand, when the individual consciously uses the possibilities offered by the law as a means to assert his interests or other claims. The former is of more interest from the sociological point of view in the study of the enforcement and effectiveness of law in general, while the latter is of greater importance from the perspective of the study of legal consciousness.

In the case of "passive" compliance, the person's action objectively complies with the law, regardless of his or her motives. The focus here is therefore on the fulfilment of the individual's legal obligations, which may be obligations established by the law enforcement authority in the course of a legal procedure or civil obligations between individuals. Since the beginning of the last century, legal sociology has been aware, following the work of Eugen Ehrlich (Ehrlich, 1936), of the importance of legal transactions and legal actions without dispute – "trouble-less cases", to use John Griffiths's term (Griffiths, 2003) – for the legal life as a whole. This mass of legal actions constitutes "living law", even though we know that "passive", "indifferent" legal action is often in fact due to the influence of other social norms supporting the law – morality, custom, manners, etc.

In contrast, the other type of legal action, where the individual is able to use the law as a tool, presupposes not only a relatively high level of knowledge of the law, the "understanding of the law", but also a specific attitude towards the law, the "rights consciousness" (Sajó, 1988; Ewick & Silbey, 1988). The latter implies that the individual relies on a disposition of "claiming" rather than "bagging" vis-à-vis the authorities that administer the law. However, the use of law as an instrument is not only subject to the conditions inherent in the individual subject, but also requires certain external conditions which are factually given to the individual: specific social resources must be available for litigation – time, money, education, etc. – the lack of which may constitute an obstacle to the invoking of law. These social resources are, of course, unevenly distributed along social stratification, which is reflected in the critical approach that sociology of law has taken since the 1980s to the issue of "access to law" (Styles, 2001; Munger, 2006; Hernández, 2010).

The study of the former type of legal action – the "living law" – requires mainly micro-sociological, legal anthropological or qualitative (documentary) research (Nader, 1990; Griffiths, 2003), while the latter type requires the analysis of the "rights

consciousness", the litigation rate and the "litigation disposition" (Kulcsár, 1982, pp. 565–589; Blankenburg, 1994; Blankenburg, 1997; Murayama, 2013, Róbert & Fekete, 2018).

Ad (g). After reviewing the fields of influence from the individual to the level of society, "upwards", we have again reached the "social level", whose layer closer to the ground, directly related to the action of the members of society, can be identified as the level of the state or governmental organisation. However, two aspects of the traditional use of the term need to be nuanced here. On the one hand, the adjectives "state" or "government" evoke the dominance of the political element, while our analysis implies a predominance of legal connotations. Therefore, in the functioning of parliament or government, for example, it is not so much the function of political decision-making as that of legislation that will be of interest to us. It is from this particular legal perspective that Lawrence Friedman, for example, tries to define this institutional layer when he mentions the legal institutional system as an element of the legal system, alongside legal norms and legal culture (Friedman, 1975, pp. 1–24). Or Blankenburg when he speaks of the "legal infrastructure", which may also include non-state organisations operating in the shadow of the law and institutionally ensuring the avoidance of the law (Blankenburg, 1994).

On the other hand, the usual terminology leaves the fact of organisational complexity unreflected. And here it is not enough to think of the functional separation of the legislator, the law enforcer (concentrating on dispute resolution and the application of sanctions) and the "regulatory authorities", as accepted in the sociology of law, reflecting the political doctrine of the separation of powers. In fact, legal institutions show a very complex internal structure in terms of their organisational interests, their access to social resources, their power and communication relations.

The harmonised, transparent structure of legal institutions; their predictable, reliable and efficient functioning; their easy accessibility to the citizen; their organisational ethos (who serves whom? The state serves the citizen, or vice versa?); their subjection to publicity and other forms of democratic control (Krygier, 2009): these are all factors that influence both the ideological image of law formed by socialisation and social communication, the degree of trust in law and the range of individual legal experiences that reinforce or destroy it.

Ad (h). The concept of social legal consciousness raises a number of theoretical and methodological problems. Some of the theoretical problems stem from the fact that the concept, as we have seen above, is deeply embedded in the Marxist social science tradition. First of all, therefore, it must be stressed that social legal consciousness cannot be associated with a "collective personality" conceived as the bearer of Marx's "class consciousness", since in a psychologically precise sense it is only the individual who has it. Individual legal consciousness therefore contains both the individual characteristics of a given person and the conscious elements of the individual arising from his or her social embeddedness.

Hence the methodological difficulties. It is often hard to distinguish between the components of individual legal consciousness that fall within the scope of psychology and those that belong to social psychology. The changes described by developmental psychology, which show a different dominance of cognitive, emotional and reactive

aspects in the various stages of personality development, tend to belong to the former. On the other hand, the phenomena of identity, self-esteem and prejudice, which are linked to the psychological effects of social relationships, relate to the latter.

The difficulty also stems from the Marxist tradition, as mentioned above too, of an over-simplistic conception of the relationship between the individual and society, which ignores the structural elements that are inherent in the relationship between the individual and society as the most comprehensive (political) community. Following John Griffiths's admonitions in his critique of the instrumental approach to law-making, we must therefore take into account that the individual is never directly linked to the state, but always through a system of smaller or larger, partially overlapping groups and communities. Secondly, the legal message from the legislator to the addressee of the norm never passes through a normative vacuum. Thirdly, the state does not have an exclusive normative monopoly (Griffiths, 2003, pp. 13–17). In the light of these considerations, we can begin to take stock of the structural mediating elements between the individual and society, which can be grouped into three intersecting dimensions: social stratification (i), social groups (ii) and professional groups (iii).

Ad (i). The "hard facts" that determine an individual's social status include gender, age, wealth, income, education and place of residence. The impact of social stratification on legal knowledge and legal consciousness has already been investigated by researchers in the first wave of KOL studies (Podgórecki et al., 1973). The results showed that all the factors determining stratification had a varying degree of impact on the legal consciousness of the samples studied, but no general correlation could be found. The impact of these factors seemed to be organised into different patterns, but these showed a variable pattern across countries and legal cultures. Subsequent research has suggested two likely trends: first, that the most significant influence on the development of legal knowledge is the level of education. The second is that gender differences have decreased over time, both in terms of the level of legal knowledge and in terms of opinions about the law (Kulcsár, 1967; Gajduschek & Fekete, 2015).

Ad (ii). The more significant forms of social groups are those organised along family, kinship, ethnic, local, age, religious or ideological lines. Societal groups have a significant impact on the formation and development of an individual's identity, due to the strong affective effects of direct, face-to-face communication and interpersonal contact, and their specific internal psychological dynamics. Although from the outset researchers have assumed the influence of social groups on individual sense of entitlement, it was only from the mid-1970s onwards, following the adaptation of the "participant observation" method from anthropology, that research in this area gained momentum. In the following decades, researchers from kibbutzim in Israel (Schwartz, 1954) to Chiapas Indian communities in Central America (Collier, 1979) to suburban residential communities in the United States (Greenhouse et al., 1994) have investigated the impact of group internal structure, cohesion and culture on dispute resolution and the formation of individual conceptions of law in a wide variety of groups.

Ad (iii). Professional groups constitute actually the structure of society based on the division of labour, which includes all kinds of institutions and more or less formalised organisations in the economic, political, cultural and of course legal spheres. Belonging to

a professional group – one's "occupation" – is itself a status factor, but this has lost much of its importance in recent decades. Nevertheless, participation in certain professional groups – "professional orders", trade unions, political parties, companies in various sectors of the economy, etc. – has a differential impact on the legal knowledge and legal consciousness of the individuals involved, as they need particular legal skills and gain specific legal experience in their occupation.

In the early period of the KOL studies, we can already find research that examined the effect of occupational group membership on the attitude towards law (Podgórecki et al., 1973), and such attempts were also made in the Hungarian legal consciousness studies in the 1970s (Sajó, 1981a; Sajó, 1981b). However, from the 1980s onwards, both international (Morison et al., 1991; Katzman, 1995; Abel, 1997; Pue & Sugarman, 2003) and Hungarian research (Utasi, 1999; Utasi, 2016; H. Szilágyi & Jankó-Badó, 2018) has increasingly focused on the legal consciousness of a single professional group: the legal profession.

From the studies, it is clear that the legal profession is a highly prestigious intellectual career, with the majority of its members recruited from middle-class families. Entry to the profession is based on a theoretical qualification (law degree) obtained through specific education, usually followed by a longer or shorter period of practical training. The legal professions are divided into professional groups (judges, lawyers, prosecutors, administrators) with a structure that varies from country to country and from one legal culture to another. This internal division of the profession, the size and prestige of the groups in relation to each other, the typical trajectories of internal mobility between the groups, are all factors which influence the degree of cohesion between the members of the profession, the development of the self-image of the legal profession and its external, social perception (the image of the legal profession in society). Lawyers are characterised by a level of legal knowledge and understanding and legal competence that is higher than that of lay people, but not necessarily accompanied by a higher level of respect for the law. The social function – and in fact the monopoly – of the legal profession is the elaboration and "maintenance" of the normative layer of legal culture, and the care of the doctrinal-dogmatic layer connected to it. This function is linked to the distinction between lay and professional legal culture, which will be discussed below in connection with the concept of legal culture.

Two comments should be made on the above outline of the structures that mediate between the individual and society. One is that in our review we have focused only on corporative groups and structural elements with relatively clear boundaries to the social milieu, and have ignored the so-called "semi-autonomous social fields" (Moore, 1973). These are fields of social power in which not only individuals but also corporative groups may be present, and which are capable of generating and enforcing autonomous normative systems against participants independently of state law. These subtle elements of social structure can only be studied using micro-sociological methods.

The rapid expansion of forms of communication on the internet and the rapid transformation of communication opportunities in recent decades have raised further problems. These phenomena obviously need to be taken into account when discussing the two strands of communication mentioned above (social and individual communication),

but the processes of group formation in "virtual reality" are obviously also linked to the study of mediating structures. For instance, the question is whether the model of the "semi-autonomous social field" can be applied to the functioning of virtual communities on Internet social networking sites, or to what extent and in what way the communication taking place there influences the participants' legal consciousness.

Our second comment is that this diverse array of mediating structures is a kaleidoscope that dissects and multiplies the previously enumerated beams of legal socialisation, communication and action. It also means that the effects and contexts that can be researched are multiplied. No wonder, therefore, that citizens who are not familiar with law or the legal sciences sometimes find it insurmountably difficult to form a consistent picture of the law. However, this leads back to the problems of the structure of individual legal consciousness.

3.4. Conceptual issues in the study of social legal consciousness

Taking into account the Marxist and neo-Marxist ideological implications of the concept of social consciousness of rights, it is not sufficient to define the concept as a residual category linked to individual consciousness of rights, including all the socio-psychological aspects – attitudes, opinions, beliefs, mass feelings – which cannot be included in the former. In order to free the concept from the "obligatory" critical character of the Marxist tradition, we draw on two reflections by Marc Hertogh.

Hertogh distinguishes between two strategies for constructing the concept of a legal consciousness: the American and the European conception (Hertogh, 2004). The former, which goes back to the work of Roscoe Pound, is based on the distinction between Law in Books and Law in Action (Pound, 1910). The aim of sociological studies of law is to explore the difference between the two, i.e. how, why and to what extent the (official) law in practice differs from the official law. The central question for legal studies in this tradition is how people perceive formal law. In this view, law becomes an independent variable and legal consciousness an explanatory factor for deviation from the law.

In contrast, the European concept of legal consciousness is inspired primarily by the work of Eugen Ehrlich (Ehrlich, 1920), which focuses on the concept of "living law". Sociological research should focus not on formal law but on "living law", which is the centre of gravity of the life of law, since formal law is only applied by public authorities in the resolution of disputes, whereas living law is applied in transactions that are carried out without dispute and which constitute the predominant part of legal life. From this perspective, the main question for legal studies is therefore not how people perceive formal law, but what they perceive as law in the first place. Thus, law becomes a contingent variable when viewed from this perspective.

In another line of thought, Hertogh distinguishes between two approaches to legal consciousness studies, the "critical" and the "secular" (Hertogh, 2018, pp. 1–15). The former is closely linked to the tradition of Critical Legal Studies, which is largely neo-Marxist in inspiration, and to the American conception of legal consciousness described above. In the three decades between the 1970s and the turn of the millennium,

a number of major studies were carried out in this approach.[6] What they have in common is that they sought to answer the question of why people turn to the law, despite the fact that it actually works against their interests and that they are often disappointed by it. They tried to show the pervasive presence and hegemony of law in social life and, above all, to identify the motives for its acceptance and support.

The "secular" approach,[7] which Hertogh himself advocates, on the other hand, drawing on the European concept of legal consciousness, refuses to take the hegemony of law as given and focuses primarily on why people do not follow formal law and seek alternative solutions instead. Instead of accepting law, it thus focuses on forms of alienation from law, avoidance of law, defiance of law and alternative forms of social control in place of formal law.

What conclusions can we draw from the above considerations with regard to the conceptualisation of social legal consciousness? First, that we must conceive of social legal consciousness as a phenomenon that interacts with legal culture. From the point of view of social consciousness, law (legal culture) appears sometimes as an independent variable and sometimes as a dependent variable. Legal culture shapes legal consciousness, but it is also shaped by social legal consciousness. The American and European conceptions of legal consciousness as outlined by Hertogh are in fact "two sides of the same coin" illuminating two relations of interaction.

On the other hand, social legal consciousness should be understood as being internally structured according to the structural elements that link the individual to society – social stratification, societal and professional groups – as is the case with legal culture. It is also far from certain that formal law is able to fully dominate interactions in all segments of society, and therefore the study of negative attitudes and feelings towards law is as important as the study of acceptance and support for law.

4. The concept of legal culture

In defining the concept of legal culture, I will first take account of its difficulties, starting with a review of the academic debate that has developed in the wake of Lawrence Friedman's work, published almost half a century ago. In the light of the conceptual criteria drawn from this debate, I will attempt to build up the concept of culture as a core concept, with a sociological concept of law as a distinguishing feature. I will then introduce the distinction between lay and professional culture and examine the extent to which the concept I have sketched meets the criteria I have previously set out.

[6] See e.g. Galanter (1974); Galanter (1981); Merry (1990); Ewick & Silbey (1998); Engel (1998); Nielsen (2000).

[7] The irony of the term "secular" is hard to miss, given the Marxist commitment of the proponents of the "critical" approach.

4.1. Difficulties in conceptualisation

The difficulties in defining the concept of legal culture are reflected in the academic debate[8] that has emerged in the wake of Lawrence Friedman's work (Friedman, 1975). In his work on the legal system, Friedman gave several definitions of legal culture (a), highlighting different conceptual elements. For example, in the first chapter of the volume, which serves as a theoretical introduction, he considers legal culture to be part of culture in general: "Those parts of the general culture – habits, beliefs, ways of acting and thinking – that incline social forces towards or away from the law" (Friedman, 1975, p. 15). In the chapter on legal culture, the term legal culture refers to "knowledge of and attitudes and patterns of behavior towards the law" (Friedman, 1975, p. 19). In a later work, we find a similar, slightly expanded version of the conceptual elements: "Ideas, attitudes, expectations and opinions that people in a particular society hold about the law" (Friedman, 1990, p. 213). In other cases, it describes legal culture as a kind of "aggregate" of these elements (Friedman, 1990, pp. 212–213).

On the other hand, Friedman emphasises that the concept of legal culture can be interpreted at different levels (b). We can talk about the legal culture of a nation, but we can also interpret it in the case of a region, a social group (Friedman, 1975, p. 19). On the other end of the scale, it can be used to describe larger historical periods, such as "the legal culture of modernity" (Friedman, 1994), or larger geographical units, such as "Western legal culture" (Friedman, 1990, pp. 198–199).

Third, within the phenomenon of legal culture, Friedman distinguishes between "external" and "internal" legal culture (c) (Friedman, 1975, p. 223; Friedman, 1977, p. 76; Friedman, 1990, p. 4), the former denoting the legal culture of lay citizens and the latter the legal culture of "members of a society who perform some special legal function" (Friedman, 1975, p. 223), which he attributes a distinct importance to the functioning of the legal system (Friedman, 1975, p. 194).

The most thorough critic of Friedman's concept, Roger Cotterrell, points out that the conceptual vagueness of Friedman's definition of legal culture (ad a) allows it to be used as a broad, residual category – for example, in the field of legal comparison, in the grouping of legal systems – but that it has much less explanatory power in empirical research. In particular, the conceptual elements listed are rather heterogeneous in nature and do not facilitate the linking of legal culture with actual social processes (Cotterrell, 2006, pp. 81–88).

David Nelken, on the other hand, argues that European comparative legal research has already developed a multi-layered conception of legal culture,[9] which includes the study of legal norms, the distinctive forms and "infrastructure" of legal institutions, the attitudes that create, use or do not use the law, and the legal consciousness of lawyers and lay people. With this in mind, he believes that the concept of legal culture is a concept that can be retained and refined in the light of current research. At the same time, Nelken rejects Cotterrell's suggestion that the concept of legal culture, which is not conceptually

[8] For a summary of some aspects of the debate see Nelken (1995); Silbey (2001); Kurkchiyan (2009).

[9] Here Nelken refers primarily to the research of Erhardt Blankenburg (see Blankenburg, 1994; Blankenburg, 1997).

clear, should be replaced by the concept of "legal ideology", which better expresses the link between law and political discourse. Nelken stresses that such a conceptual exchange would hardly be fruitful, since the concept of ideology is as contested and ambiguous as that of culture, and is deeply embedded in (Marxist) critical theories whose outlook and objectives are not necessarily identical with those of sociological research (Nelken, 1995, pp. 438–439, 446).

Returning to Cotterrell's critical reflection, the author argues that Friedman overstretches the notion of legal culture in two directions (ad b). On the one hand, he sees it as a way of characterising entities of vast temporal and spatial extent – "modernity", "Western legal culture". On the other hand, however, Friedman seems to subscribe to a radical conception of legal pluralism, especially in his later works, when he stresses that the concept of legal culture can be interpreted to include all social units "under the state" – local, religious, ethnic, etc. groups – and thus legal culture appears as a "dizzying parade of cultures" (Friedman, 1990, p. 213). However, it provides little guidance as to how these diverse cultural "aggregates" can integrate into larger entities (Cotterrell, 2006, p. 84).

In fact, at this point Cotterrell points to the difficulty of radical legal pluralism, which Andrew Arno called "legal exclusivism" (Arno, 1985, p. 41). He describes legal exclusivism as the tendency to attribute to legal phenomena a prominent, central importance in relation to other social phenomena. In the case of radical legal pluralism, this takes the form of considering all forms of social control as law. This extension of the concept of law, however, leads to a doubling of the concept: an analytical concept of law on the one hand and a historical concept on the other. This not only threatens to lose the historical perspective of law, but also makes it difficult to explain the relationship between law and other forms of social control.

As for Friedman's separation of "external" and "internal" legal culture (ad c), Cotterrell explains that the above-mentioned vagueness of the concept makes this distinction lose most of its sociological explanatory potential. There is no clear answer to the question why we should consider the "internal" legal culture more important than the "external" one for the functioning of law, and what the relationship between the two aspects is. Furthermore, since Friedman emphasises the diversity and plurality of legal culture while ultimately treating it as a unity, the "internal" aspect appears as an aggregate representing the unity of legal culture, as opposed to the "external" aspect representing its diversity (Cotterrell, 2006, pp. 85–86).

From the analysis of the discussion points, it emerges that the following criteria should be borne in mind when defining the concept of legal culture: first (ad a), the concept of legal culture cannot be established without a prior clarification of either the culture or the sociological concept of law. Second (ad b), that the concept of legal culture must be constructed in such a way as to accommodate the diversity of legal culture resulting from its fragmentation according to the social structure, while avoiding the pitfalls of a radical pluralist approach. Thirdly (ad c), it must provide an answer to the relationship between the "external" and "internal" aspects of legal culture.

4.2. Definition of legal culture

In the light of the above criteria, legal culture can be defined as a fabric of values, norms, symbols, narratives and specific patterns of social practices related to law. Legal culture is directly linked to political culture through the concept of legitimacy (Krygier, 2009), and it is an integral part of the texture of culture as a whole, without sharp boundaries. Within legal culture we must also distinguish between the terrain of "lay" and "professional" legal culture. The latter is the social function – and the monopoly – of the legal profession, that is to say, the "maintenance" of the normative layer of legal culture and the development of the doctrinal-dogmatic layer related to it. The "professional" aspect is of crucial importance for the formation of legal culture as a whole. At the same time, the image of the law as it is perceived by the lay public may differ significantly from the image that lawyers wish to project "inwards" (towards the legal profession) and "outwards" (towards society as a whole).

4.3. The concept of culture

As indicated above, the conceptual formulation of legal culture requires an elaboration of the concept of "culture" as a core concept and of "law" as a concept applicable to empirical research.

The concept of man behind the concept of culture we propose[10] is based on the idea that man is a being with culture, living in culture, and that he fully exists – with his whole being – embedded in culture. His relationship to his natural and social environment is therefore not determined by his needs and biological endowments alone, but his behaviour is influenced just as importantly by his ideas about the world.

Before embarking on a further conceptual analysis of culture, we need to record the general attributes that we have included in the concept. First of all, the concept of culture always refers to a community. Culture is a communal creation into which one is born, ready for the individual. No one can create culture on his own. It follows from this – and we can add to the above concept of man – that man is by nature a social being. Secondly, that culture is not given to the individual in the same way as his biological dispositions. The individual maintains and shapes culture through his actions throughout his life. The individual is a participant in the shaping of culture, and not merely a passive subject or carrier of it. Finally, culture – like the people who bear and shape it – exists in time, and as long as it exists, it exists continuously. No matter how much a new generation may hope, it can never be a "clean sheet". Culture is therefore a historical phenomenon, a tradition that comes from the past, and which carries its weight throughout one's life, adding its own and passing it on to future generations.

[10] The following outline is based mainly on my research in cultural anthropology and the main literature used to develop it: Benedict (1961); Bibó (2015); Bohannan & Glazer (1973); Geertz (1973); Leach (1982); Lévi-Strauss (1963); Turner (1969); Wolf (2010).

The next step in our analysis is to reduce the concept of culture to the concept of "pattern". Although the notion of pattern is also used in a wide range of different senses, there are some common elements. One of these is the element of regularity: a pattern creates the idea of repetition, which can occur in a wide variety of dimensions in space and time. If the pattern is somehow related to time, it is associated with a sense of regularity, of permanence. At the same time, the notion of pattern also refers to "form", which can be separated from the thing patterned, the bearer of the pattern.

The concept of pattern can be further broken down into a wide variety of aspects – e.g. content, structure, nature of the thing patterned – and thus we can talk about a great variety of patterns. This is important for the concept of culture only in so far as we can also relate the notion of pattern to human behaviour, in so far as we assume that certain enduring regularities can be observed in it. This brings us to the concept of "cultural patterns", which refers to forms and regularities of human behaviour in a given community that are not derived from biological endowments (inherited traits).

It should be noted here that biological and cultural patterns of human behaviour are not independent of each other. In some circumstances, acquired (learned) patterns may become heritable, and it is debatable to what extent certain regularly occurring behaviours are due to biological endowments and to what extent to cultural patterns.

The general concept of pattern includes the distinction between descriptive and prescriptive patterns. A descriptive pattern refers to a pattern that can be discovered in something that already exists – a pattern of "something" (e.g. a fossil imprint left in limestone). A prescriptive pattern, on the other hand, is a pattern of something to be formed or shaped – a pattern made "for something" (e.g. a design for a house). This distinction can also be applied to cultural patterns, and is of no small relevance to sociological inquiry: it is one thing how people actually act in social practice – that is, what sociology describes (sociological patterns) – and another thing what people think they should do – the patterns of expected, prescribed action. These two kinds of cultural patterns are, of course, not independent of each other either, and it is not so easy to tell whether a pattern is descriptive or prescriptive. For example, if you prepare a technical drawing of an existing house, it becomes a descriptive pattern, but if you build a new house on the basis of it, it becomes a prescriptive pattern. The descriptive or prescriptive nature of cultural patterns therefore depends on their application and use in social practice.

The concept of culture can therefore be defined in general terms as the set of cultural patterns specific to a given community that shape the interactions between members of society, groups of society, or even between different societies, or indeed between the natural environment and society.

Culture, however, is not some amorphous mass of cultural patterns, but has an internal order, a structure. One aspect of this internal structure is the way in which the patterns relate to phenomena of social life. On this basis, we can talk about sexual culture, housing culture or just political or legal culture. On the other hand, culture is also adapted to social structure. In complex, modern societies, culture is thus adapted to social stratification and the structure of social groups (family, kinship, residential community, circle of friends) and professional groups (occupation, profession) following the functional division of labour.

This relative separation and interconnection of the layers of cultural patterns is not a mechanical aggregation, but the result of the internal dynamics of culture. The main driving force behind this internal self-movement of culture, which is partly independent of social reality but interacts with it, is the creativity inherent in language and symbols.

According to the traditional view, language is the "connective tissue" of culture, as it is the main vehicle of cultural patterns and the basic form of communication between members of society. However, language – as has become increasingly evident in philosophy following the linguistic turn and in sociolinguistics, which became institutionalised in the second half of the last century – not only carries and connects layers of cultural patterns, but also plays a role in their creation. Language is thus not only a passive, neutral means of communication, but also a constitutive element of culture.[11]

Linguistic signs themselves have multiple meanings, and language can be seen as a specific system of symbols. Symbols are signs with multiple meanings, which can also be grouped according to the nature of their bearer (linguistic, visual, material, etc.). Social actions – to borrow Max Weber's definition (Weber, 1978, pp. 22–24): human actions which, according to the intended meaning of the actor, refer to or are in the process of being adapted to the behaviour of others – are also generally symbolic and their meaning can be understood in the context of culture. In case of certain symbolic actions, such as rites, it is the very meaninglessness of the formalised action itself that allows the participants to be linked together, despite the fact that they are motivated by different values or conflicting interests and ideas. Symbols perform specific functions in communication. On the one hand, they substitute for certain things, as all symbols do, and on the other hand, they integrate the community, because only members of that community will know the rich meanings attached to the symbol. Another very important feature of symbols is that they do not only function in the cognitive sphere, but are also capable of evoking specific emotions, thus increasing community cohesion.

So cultural patterns do not just float indifferently side by side, but are bound together by intricate and multifaceted relationships that are extremely complex. The adjective "complex" is no exaggeration: every culture is a whole world. In cultural anthropology, the recognition that culture must be understood as an entity in its own right, with its own internal structure and image, has been of great importance. The relative independence of culture from social, physical reality is precisely based on this internal order and self-movement.

4.4. A sociological concept of law

The conceptualisation of legal culture requires, in addition to the core concept of "culture", a sociological definition of "law" that can be used in empirical cultural research. Of the three distinctive conceptualisation strategies in the sociology of law – "legal monism", "legal pluralism" and "mediating theories" – distinguished by Roger Cotterrell

[11] On the question of linguistic creativity see Austin (1975); Hymes (2005); Lucy (1993); Searl (1969); Wardhaugh (2006).

(Cotterrell, 1983), it is the "mediating theories" that have seemed to us to be the most fruitful. What these conceptions have in common is that they define law more broadly than "lawyers' law" or state law, and that they also consider lawyers' practical definitions of law to be sociologically inadequate, yet they limit the concept of law by giving a prominent role and clear primacy to state law in modern societies today. The solution we propose is to posit as the core concept of law the notion of "social control" derived from a functional analysis of social workings, while adding as its distinguishing feature a conceptual element based on the above conceptual analysis of culture: law is a specific form of social control, a set of cultural patterns whose assertion is ensured by the state.

The first half of the definition tells us two things. The first is that the concept of social control is broader than law, since law is only one – a historically given – form of social control (Black, 1976, p. 15). The second thing that the first part of the definition warns us about is that we cannot limit the scope of our research to law. We can only analyse the problems of the enforcement and effectiveness of law in relation to other forms of social control.

Given that we have already discussed the nature of "cultural patterns", two things need further clarification in the second round of our definition: the concept of "the state" and what it means that "the state ensures" that certain cultural patterns prevail.

We limit the concept of "state" here to the historical type of the "modern nation state", adding that from a sociological point of view it is very important to keep in mind that the state is an extremely complex and differentiated institutional structure.

As regards the relationship between state action and cultural patterns considered law, we must also assume a multifaceted system of relations. This ranges from very direct effects – where the state makes and directly enforces rules (e.g. collects taxes) – to cases where the relationship is, so to speak, "loose". For example, when the parties to a civil dispute reach a settlement in anticipation of a court decision, or when the state sets the compulsory curriculum for education or the requirements for graduation. In the latter cases, it is clear that the state neither creates nor imposes cultural patterns, but it does influence the course of events.

The assumption of an indirect link between state action and the prevalence of certain cultural patterns, and the identification of social control as the core concept of law, allows us to take into account considerations arising from the view of legal pluralism. In examining legal phenomena, it is therefore impossible to ignore the effects of the power fields and semi-autonomous social fields that are created in the various segments of the social structure.

4.5. Professional and lay legal culture

In order to shed more light on the separation of professional and lay legal culture and on the conceptual elements of legal culture, we present as an example a conceptual analysis of a specific facet of professional legal culture, the professional self-image of the Hungarian attorneys, drawn from a recent empirical study (H. Szilágyi & Jankó-Badó, 2018).

Our point of departure, therefore, is that the discussion on the self-image of the legal profession must be placed in the discourse on culture, and within it, on legal culture. In this context, the self-image of the attorneys is understood as an element of "professional legal culture", separated from or contrasted with the "lay" legal culture. The self-image of the profession, however, can itself be understood as a set of intellectual contents and elements: values, norms, descriptive cultural patterns, narratives, symbols and patterns of behaviour of the members of the profession.

The values that are characteristic of the attorneys' self-image – high level of legal knowledge, sense of justice, impartiality, unconditional respect for the client's interests, etc. – are also part of the more general values of the legal profession and are embedded in the even more universal values of political culture, such as freedom, equality or social solidarity.

The layer of self-image that is one notch closer to the level of social actions is the layer of rules of the profession, some of which are "written", legal or juridical rules, such as in our case the Law on Lawyers XI of 1998 or the ethical codes of the bar associations. In addition, of course, there are unwritten rules – such as collegial rules or rules of "courtesy" in dealing with lay people – which are also part of the profession's self-image.

Descriptive cultural patterns do not primarily tell us what the actors in a given situation should do, but rather they indicate the position and competence of the actors. They give us information about the place and scope of action of a given social group in society or, more specifically, in the world of law. In our case, for example, the rules of the Code of Civil Procedure on the conduct of proceedings, which are addressed primarily to judges, also define the position and possibilities of lawyers to influence the course of proceedings.

The values, the layers of prescriptive and descriptive cultural patterns, analytically separated above, are woven together by narratives – in our case, the stories known and told by lawyers – at the same time creating, in Robert Cover's terms, the "normative universe" in which they take on meaning (Cover, 1983, p. 4). Every profession has its "great stories", such as the history of the Hungarian legal profession, which is otherwise the subject of the history of law, and which is supposed to be elaborated and "told" to future lawyers during their university education. These grand narratives are woven around the major turning points and prominent figures in the history of the profession as a corporate group, which form the basis of the identity of the whole profession. Upon these grand narratives hang the web of local, "urban legends" and personal stories, which are linked by a thousand strands to other areas of culture (H. Szilágyi, 2015).

The symbols expressing self-image are not understood here in their physical reality – luxury car, expensive watch, rice-pod wig, robe, "very smart" phone, high-end laptop, etc. – but as symbols with multiple meanings. Symbols can both signal the fact of belonging to a profession and at the same time mobilise complex emotions and contents of consciousness in outsiders. In case of lawyers, for example, status symbols are of particular importance. Not only because they indicate middle-class status but also because they create a sense of success in the client (such as a luxury car or a branded watch), while other symbols (such as the yester-year attorneys' briefcase) explicitly indicate belonging to the profession. There are also certain rites and rituals associated with entering and

belonging to the profession, such as the doctoral oath or polite forms of interaction between colleagues.

We should also talk about the layers of patterns that can be read from the behaviour of practitioners of the profession, which belong to the tacit knowledge that those entering the profession learn by observing the activities of colleagues. These are the tricks of the trade, which can only be learned in practice and which often significantly differ from the idealised values and rules of the profession's manifest self-image.

The basic tendency of the formation of professional self-image is to strive for intellectual unity and internal coherence, since there are always contradictions and internal tensions between the above-mentioned elements and layers of self-image. Presumably, the more coherent and clearer the self-image, the better it can ensure cohesion between practitioners and contribute significantly to the capacity of the profession to advocate its interests. Conversely, the more contradictory, fragmented and unclear the self-image of the profession, the less able it is to integrate its members and the less vulnerable it is to external influences. However, the role of a solid and clear self-image of the profession for the development of its social position is always an empirical question: too strong a corporative spirit can also become an obstacle to an adequate response to social change.

Important conclusions from the above analysis for the separation of professional and lay legal culture are: first, that the structure of lay legal culture is similar to that of professional culture, only its normative-dogmatic layer is much thinner and more fragmented, fraught with logical contradictions (Berkics, 2015a). Secondly, that these differences, even if very substantial, are still gradational and do not affect the fundamental identity of these two aspects of legal culture in terms of the components, the structure and the fine web that connects the elements. Thirdly, that stories about law are also very important for describing and understanding lay legal culture. These narratives, which not only link and organise the elements of legal culture – the values, norms, symbols and patterns of action and thought that crystallise in social practice – but also weave legal culture into the culture as a whole (H. Szilágyi, 2021).

4.6. Compliance with the definition criteria

Before analysing the concept of legal culture, three criteria of conceptualisation were identified: firstly (a) that the concept of legal culture cannot be conceived without a prior clarification of either the culture or the sociological concept of law. Second (b) that the concept of legal culture must be constructed in such a way as to manage the diversity of legal culture resulting from its fragmentation according to the social structure, while avoiding the pitfalls of a radical pluralist approach. Thirdly (c), it must provide an answer to the relationship between the "external" and "internal" aspects of legal culture. The results of the analysis in this respect are summarised below.

Ad (a). The decision to limit the concept of culture to purely objectified intellectual contents – values, norms, symbols, narratives – has pushed the conceptualisation in the direction of using the concept thus given as a tool for the semiotic analysis of "meaningful

social actions" in the first place. What is more, our argument has precisely highlighted the autonomy of culture (legal culture), its relative independence from actual social conditions.

However, the question of how to relate the concept thus created to current social processes remains open. Is it sufficient to refer to the effect of values on moral emotions or to the integrative function of symbols? Can these conceptual elements of culture be placed without concern in the context of patterns of social practices, of individual opinions and attitudes towards law, which develop spontaneously at the social level? These questions can be answered by analysing the relationship between legal culture and legal consciousness.

Ad (b). Our sociological concept of law allows us to take into account the diversity of legal culture due to its fragmentation according to the social structure, yet it avoids the pitfall of a radical pluralist approach by linking the sociological concept of law to the historical phenomenon of the modern nation state.

Ad (c). The outlined concept of legal culture allows for an analysis of the dynamic interaction between "lay" and "professional" legal culture, by emphasising the relativity of their separation and the organic relationship between the two aspects.

5. Conclusions

The concepts of legal awareness and legal culture are closely related and, due to a lack of theoretical clarification, are often used as synonymous concepts. According to Susan S. Silbey, recent research trends are moving in the direction of using the concept of legal culture (as a semiotic analytical tool) in macro-level theoretical and comparative research. Whereas in micro-level research, especially when the object of study is how individuals interpret and mobilise legal meanings and signs, the concept of legal culture is used rather than legal consciousness (Silbey, 2001, p. 8624). However, this distinction is not so much based on conceptual analysis as on a supposed difference in the object of research and the different traditions of the various academic disciplines (legal anthropology, legal ethnography, comparative law, sociology of law).

Other theorising strategies resolve the relationship between the two concepts by subordinating one to the other. Marina Kurkchiyan, for example, uses the solution of subordinating the concept of legal consciousness to the concept of legal culture, defining it as one of its elements (Kurkchiyan, 2009, pp. 337–338). Kahei Rokumoto, on the other hand, in a 2004 study, considers legal culture a part of legal consciousness at the societal level, alongside legal knowledge and legal attitudes and legal sentiments. The core concept of legal culture is legal conception, which has a remarkable durability over time, in contrast to legal knowledge and attitudes and legal sentiments, which can change significantly over a short period of time. Rokumoto stresses the qualitative difference between the elements of legal consciousness, insofar as legal knowledge, attitudes towards law and legal emotions can be studied empirically, using sociological and social psychological methods, whereas legal culture is a phenomenon accessible to the tools of cultural studies (Murayama, 2014, p. 191).

In our view, as presented above, the concepts of individual legal consciousness, social legal consciousness and legal culture should be separated. The purpose of this separation is not only to make clear the different nature of the phenomena thus separated, to which the methods of analysis should be adapted. Hence, in the case of legal culture, the methods of linguistic analysis, textual analysis, logical and normative analysis and legal semiotics are all relevant to the method of documentary analysis. The conceptually defined phenomena of individual legal consciousness fall essentially within the domain of psychology, whereas social legal consciousness lies within the scope of social psychology.

Their separation highlights not only the methodological differences in their study, but also the fact that these phenomena are subject to different laws: the relative autonomy of culture is precisely based on the fact that it is not simply determined by social realities, but to a large extent by the laws of ethics, aesthetics and logic. Similarly, individual behaviour has components determined in the individual psyche, and components that are organised and operate according to laws that derive from social existence and are distinct from the laws that govern the individual psyche. At the same time, a clear separation of these three concepts allows a more in-depth analysis of the relationships linking the phenomena they cover, taking into account the different laws that determine them.

The conceptual analysis of legal consciousness and legal culture outlined above brings us first of all to the illumination of the fact that the formation of legal consciousness takes place in a multi-level, multi-layered structure, which are in constant interaction with each other. The individual's legal consciousness, which is a web of knowledge, volitional and emotional elements relating to the law, is organised according to the psychological laws of the individual. It is only relatively separable from the social legal consciousness, which is the sum of the manifestations of individual legal consciousness, but which operates according to the specific internal dynamics of social interaction. Social legal consciousness, on the other hand, is inextricably linked to legal culture, which enshrines intellectual content and forms that are more durable and objective than mass sentiment, public opinion and public mood, but which is itself subject to change. It is precisely changes in social consciousness that bring about these changes, in so far as they are capable of reaching a certain intensity and of modifying the social structure.

Another conclusion from the conceptual analysis is related to this. Both individual and social legal consciousness, as well as legal culture in its internal articulation, is adapted to the system of structural elements linking the individual to society as a whole, i.e. to the social structure. The study of legal consciousness is therefore inseparable from the study of the formal or informal social organisations and forces that operate the legal institutional system, the "legal infrastructure" and the competing forms of social control.

References

Abel, R. L. (Ed.) (1997). Lawyers: A Critical Reader. The New Press.

Akers, R. L. (1998). Social Learning and Social Structure. A General Theory of Crime and Deviance. Northeastern University Press.

Akers, R. L. & Jensen, G. F. (2006). The Empirical Status of Social Learning Theory of Crime and Deviance: The Past, Present, and Future. In F. T. Cullen, J. P. Wright & K. R. Blevins (Eds.), Taking Stock: The Status of Criminological Theory (pp. 37–76). Transaction Publishers. Online: https://doi.org/10.4324/9781315130620-2

Allport, G. W. (1935). Attitudes. In C. Murchison (Ed.), A Handbook of Social Psychology (pp. 789–844). Clark University Press.

Almond, G. & Verba, S. (1963). The Civic Culture. Political Attitudes and Democracy in Five Nations. Princeton University Press. Online: https://doi.org/10.1515/9781400874569

Amand, M. D. St. & Zamble, E. (2001). Impact of Information about Sentencing Decisions on Public Attitudes Toward the Criminal Justice System. Law and Human Behavior, 25(5), 515–528. Online: https://doi.org/10.1023/A:1012844932754

Anderson, E. (2000). Code of the Street. Decency, Violence, and the Moral Life of the Inner City. W. W. Norton & Company.

Aristodemou, M. (1993). Studies in Law and Literature. Directions and Concerns. Anglo-American Law Review, 2, 157–193.

Arno, A. (1985). Structural Communication and Control Communication: An Interactionist Perspective on Legal and Customary Procedures for Conflict Management. American Anthropologist, 87(1), 40–55. Online: https://doi.org/10.1525/aa.1985.87.1.02a00050

Aubert, V. (1963). Researches in the Sociology of Law. American Behavioral Scientist, 7(4), 16–20. Online: https://doi.org/10.1177/000276426300700405

Austin, J. L. (1975). How to Do Things with Words? (2nd ed.). Oxford University Press. Online: https://doi.org/10.1093/acprof:oso/9780198245537.001.0001

Bandura, A. (1977). Social Learning Theory. Prentice Hall.

Barabás, A. T. (2011). A mediáció lehetőségei a büntetés-végrehajtásban. In Gy. Virág (Ed.), Kriminológiai tanulmányok (pp. 98–114). Országos Kriminológiai Intézet.

Baudrillard, J. (1970). The Consumer Society. Gallimard.

Baudrillard, J. (1994). Simulacra and Simulation. University of Michigan Press. Online: https://doi.org/10.3998/mpub.9904

Baudrillard, J. (2000). The Vital Illusion. Columbia University Press. Online: https://doi.org/10.7312/baud12100

Benda-Beckmann, F. von & Benda-Beckmann, K. von (2012). Identity in Dispute: Law, Religion, and Identity in Minangkabau. Asian Ethnicity, 13(4), 341–358. Online: https://doi.org/10.1080/14631369.2012.710073

Benedict, R. F. (1961). Patterns of Culture (2nd ed.). Houghton Mifflin.

Berger, P. L. & Kellner, H. (1965). Arnold Gehlen and the Theory of Institutions. Social Research, 32(1), 110–115.

Berkics, M. (2015a). Laikusok és jogászok nézetei a jogról. In Gy. Hunyady & M. Berkics (Eds.), A jog szociálpszichológiája. A hiányzó láncszem (pp. 141–159). ELTE Eötvös Kiadó.

Berkics, M. (2015b). Rendszer és jogrendszer percepciói Magyarországon. In Gy. Hunyady & M. Berkics (Eds.), A jog szociálpszichológiája. A hiányzó láncszem (pp. 337–364). ELTE Eötvös Kiadó.

Bibó, I. [1972] (2015). The Meaning of European Social Development. In I. Bibó & I. Z. Dénes (Eds.), The Art of Peacemaking. Political Essays by István Bibó (pp. 342–442). Yale University Press. Online: https://doi.org/10.12987/yale/9780300203783.003.0009

Black, D. J. (1973). The Mobilization of Law. Journal of Legal Studies, 2(1), 125–149. Online: https://doi.org/10.1086/467494
Black, D. (1976). The Behavior of Law. Academic Press.
Black, J. (2002). Regulatory Conversations. Journal of Law and Society, 29(1), 163–196. Online: https://doi.org/10.1111/1467-6478.00215
Blankenburg, E. (1994). The Infrastructure for Avoiding Civil Litigation. Comparing Cultures of Legal Behaviour in the Netherlands and Germany. Law & Society Review, 28(4), 789–809. Online: https://doi.org/10.2307/3053997
Blankenburg, E. (1997). Civil Litigation Rates as Indicators for Legal Cultures. In D. Nelken (Ed.), Comparing Legal Cultures (pp. 41–68). Dartmouth. Online: https://doi.org/10.4324/9781315259741
Boas, F. (1911). The Mind of Primitive Man. The Classic of Anthropology – Hereditary Characteristics, Linguistic and Cultural Traits of the Human Races. Pantiamos Classics.
Boas, F. (1940). Race, Language and Culture. Macmillan.
Bognár, Sz. (2016). A népi jogélet kutatása Magyarországon. Magyar Néprajzi Társaság.
Bohannan, P. (1957). Justice and Judgement among the Tiv. Oxford University Press. Online: https://doi.org/10.4324/9781351037303
Bohannan, P. & Glazer, M. (1973). High Points in Anthropology. Knopf.
Burkell, J. & Kerr, I. (2000). Electronic Miscommunication and the Defamatory Sense. Canadian Journal of Law and Society, 15(1), 81–110. Online: https://doi.org/10.1017/S0829320100006207
Clark, D. S. (2007). Podgórecki, Adam (1925–1988). In D. S. Clarke (Ed.), Encyclopedia of Law and Society. American and Global Perspectives (Vol. 1. p. 1119.). SAGE Publications. Online: https://dx.doi.org/10.4135/9781412952637
Cohn, E. S. & White, S. O. (1990). Legal Socialization. A Study of Norms and Rules. Springer. Online: https://doi.org/10.1007/978-1-4612-3378-7
Collier, J. F. (1979). Stratification and Dispute Handling in two Highland Chiapas Communities. American Ethnologist, 6(2), 305–327. Online: https://doi.org/10.1525/ae.1979.6.2.02a00050
Cooper, D. (1995). Local Government. Legal Consciousness in the Shadow of Juridification. Journal of Law and Society, 22(4), 506–526. Online: https://doi.org/10.2307/1410612
Cotterrel, R. (1983). The Sociological Concept of Law. Journal of Law and Society, 10(2), 241–255. Online: https://doi.org/10.2307/1410234
Cotterrell, R. (2006). Law, Culture and Society. Ashgate.
Cover, R. M. (1983). Foreword: Nomos and Narrative. The Supreme Court 1982 Term. Harvard Law Review, 97(1), 4–69. Online: https://doi.org/10.2307/1340787
Derrida, J. (1978). Writing and Difference. Routledge.
Duxbury, N. (1995). Law and Letters in American Jurisprudence. Oxford University Press. Online: https://doi.org/10.1093/acprof:oso/9780198264910.001.0001
Edgar, K. & Newell, T. (2006). Restorative Justice in Prisons. A Guide to Making It Happen. Waterside Press.
Ehrlich, E. (1920). The Sociology of Law. Harvard Law Review, 36(2), 130–145. Online: https://doi.org/10.2307/1329737
Ehrlich, E. (1936). Fundamental Principles of the Sociology of Law. Harvard University Press 1936.
Elster, J. (2015). Explaining Social Behaviour. More Nuts and Bolts for the Social Sciences (2nd ed.). Cambridge University Press. Online: https://doi.org/10.1017/CBO9781107763111
Engel, D. (1998). How Does Law Matter in the Constitution of Legal Consciousness? In G. Bryan, B. G. Garth & A. Sarat (Eds.), How Does Law Matter? (pp. 109–144). Northwestern University Press.
Ewick, P. & Silbey, S. S. (1998). The Common Place of Law. Stories from Everyday Life. Chicago University Press. Online: https://doi.org/10.7208/chicago/9780226212708.001.0001
Ewick, P. & Silbey, S. S. (2003). Narrating Social Structure: Stories of Resistance to Legal Authority. American Journal of Sociology, 108(6), 1328–1372. Online: https://doi.org/10.1086/378035
Farber, H. S. & White, M. J. (1994). A Comparison of Formal and Informal Dispute Resolution in Medical Malpractice. Journal of Legal Studies, 23(2), 777–806. Online: http://dx.doi.org/10.1086/467945

Fagan, J. & Tyler, T. R. (2005). Legal Socialization of Children and Adolescents. Social Justice Research, 18, 217–241. Online: https://doi.org/10.1007/s11211-005-6823-3

Fekete, B. & H. Szilágyi, I. (2017). Knowledge and Opinion about Law (KOL) Research in Hungary. Acta Juridica Hungarica. Hungarian Journal of Legal Studies, 58(3), 326–358. Online: https://doi.org/10.1556/2052.2017.58.3.6

Fekete, B. (2019). Rights Consciousness in the CEE Region: Lessons from the Earlier Studies. Jahrbuch für Ostrecht, 60(1), 185–202. Online: https://doi.org/10.2139/ssrn.3409401

Fekete, B. (2021). Legal Ethnology and Legal Anthropology in Hungary: A Tale of Two Frozen Traditions. In M.-C. Foblets, M. Goodale, M. Sapignoli & O. Zenker (Eds.), The Oxford Handbook of Law and Anthropology. Oxford University Press. Online: http://doi.org/10.1093/oxfordhb/9780198840534.013.12

Fekete, B., Bartha, A., Gajduschek, Gy. & Gulya, F. (2022). Rights Consciousness in Hungary and Some Comparative Remarks. Could an Increasing Level of Rights Consciousness Challenge the Autocratic Tradition? Review of Central and East European Law, 47(2), 220–248. Online: https://doi.org/10.1163/15730352-bja10066

Finckenauer, J. O. (1995). Russian Youth. Law, Deviance and the Pursuit of Freedom. Transaction Publishers. Online: https://doi.org/10.4324/9781351293402

Fox, D. R. (1999). Psycholegal Scholarship's Contribution to False Consciousness about Injustice. Law and Human Behavior, 23(1), 9–30. Online: https://doi.org/10.1023/A:1022370622463

Friedman, L. M. (1975). The Legal System. A Social Science Perspective. Russel Sage Foundation.

Friedman, L. M. (1977). Law and Society: An Introduction. Prentice Hall.

Friedman, L. M. (1990). The Republic of Choice. Law, Authority, and Culture. Harvard University Press.

Friedman, L. M. (1994). Is There a Modern Legal Culture? Ratio Juris, 7(2), 117–131. Online: https://doi.org/10.1111/j.1467-9337.1994.tb00172.x

Gajduschek, Gy. & Fekete, B. (2015). Changes in the Knowledge about the Law in Hungary in the Past Half Century. Sociologija, 4, 620–636. Online: https://doi.org/10.2298/SOC1504620F

Gajduschek, Gy. (2018). Miért engedelmeskednek az emberek a dohányzást tiltó jognak? In H. Szilágyi, I. (Ed.), Jogtudat-kutatások Magyarországon 1967–2017 (pp. 279–302). Pázmány Press.

Galanter, M. (1981). Justice in Many Rooms. Courts, Private Ordering, and Indigenous Law. Journal of Legal Pluralism and Unofficial Law 13(19), 1–47. Online: https://doi.org/10.1080/07329113.1981.10756257

Galanter, M. (1974). Why the "Haves" Come out Ahead. Speculations on the Limits of Legal Change. Law & Society Review, 9(1), 95–160. Online: https://doi.org/10.2307/3053023

Geertz, C. (1973). Interpretation of Cultures. Basic Books.

Gehlen. A. [1943] (1987). Man. His Nature and Place in the World (Trans.: C. McMillan & K. Pillemer). Columbia University Press.

Gibbons, J. (Ed.) (1994). Language and the Law. Longman.

Gluckman, M. (1965). Politics, Law and Ritual in Tribal Society. Basil Blackwell.

Goodrich, P. (1990). Languages of Law. From Logics of Memory to Nomadic Masks. Wiedenfeld & Nicolson.

Greenhouse, C. J., Yngvesson, B. & Engel, D. M. (1994). Law and Community in Three American Towns. Cornell University Press. Online: https://doi.org/10.7591/9781501725012

Griffiths, J. (1986a). Recent Anthropology of Law in the Netherlands and Its Historical Background. In K. von Benda-Beckmann & F. Strijbosch (Eds.), Anthropology of Law in the Netherlands: Essays on Legal Pluralism (pp. 11–66). Foris Publications.

Griffiths, J. (1986b). What Is Legal Pluralism? Journal of Legal Pluralism and Unofficial Law, 18(24), 1–55. Online: https://doi.org/10.1080/07329113.1986.10756387

Griffiths, J. (2003). The Social Working of Legal Rules. Journal of Legal Pluralism, 35(48), 1–84. Online: https://doi.org/10.1080/07329113.2003.10756567

Gulliver, P. H. (1963). Social Control in an African Society. Routledge & Kegan Paul.

Haar, B. ter (1949). Adat Law in Indonesia. Institute of Pacific Relations.

Habermas, J. (1984). The Theory of Communicative Action I. Reason and the Rationalisation of Society. Beacon Press.
Habermas, J. (1987). The theory of Communicative Action II. System and Lifeworld: A Critique of Functionalist Reason. Beacon Press.
Hernández, D. (2010). "I'm Gonna Call My Lawyer". Shifting Legal Consciousness at the Intersection of Inequality. Studies in Law, Politics, and Society, 51, 95–121. Online: https://doi.org/10.1108/S1059-4337(2010)0000051007
Hertogh, M. (2004). A 'European' Concept of Legal Consciousness: Rediscovering Eugen Ehrlich. Journal of Law & Society Review, 31(4), 457–481. Online: https://doi.org/10.1111/j.1467-6478. 2004.00299.x
Hertogh, M. (2018). Nobody's Law. Legal Consciousness and Legal Alienation in Everyday Life. Palgrave. Online: https://doi.org/10.1057/978-1-137-60397-5
Hoebel, E. A. (1954). The Law of Primitive Man. Atheneum. Online: https://doi.org/10.4159/9780674038707
Hollán, M. & Venczel, T. (2018). Age Limits of Criminal Responsibility for Property Offences: A New Empirical Research on Legal Consciousness in Hungary. Hungarian Journal of Legal Studies, 60(4), 381–398. Online: https://doi.org/10.1556/2052.2019.00022
H. Szilágyi, I. (2015). There Is No Mercy. Acta Juridica Hungarica, 56(1), 86–107. Online: https://doi.org/10.1556/026.2015.56.1.8
H. Szilágyi, I. (Ed.) (2018). Jogtudat-kutatások Magyarországon 1967–2017. Pázmány Press.
H. Szilágyi, I. & Jankó-Badó, A. (2018). Further Thoughts on the Self-Image of the Hungarian Attorneys. International Journal of Law and Society, 1(4), 137–149. Online: https://doi.org/10.11648/j.ijls.20180104.11
H. Szilágyi, I. (2021). Embarrassing Stories. Legal Storytelling and Sociology of Law. Intersections. East European Journal of Society and Politics, 7(1), 78–96. Online: https://doi.org/10.17356/ieejsp.v7i1.667
H. Szilágyi, I., Kelemen L. & Hall, S. G. (2022). Changing Legal and Civic Culture in an Illiberal Democracy. A Social Psychological Survey of the Hungarian Legal System. Routledge. Online: https://doi.org/10.4324/9781003188926
Hymes, D. (2005). Models of the Interaction of Language and Social Life: Toward a Descriptive Theory. In S. F. Kiesling & C. B. Paulston (Eds.), Intercultural Discourse and Communication. The Essential Readings (pp. 4–16). Blackwell Publishing Ltd. Online: https://doi.org/10.1002/9780470758434.ch1
Jackson, B. (1985). Semiotics and Legal Theory. Routlegde & Kegan Paul.
Jackson, B. (Ed.) (1994). Legal Semiotics and the Sociology of Law. Proceedings of the Oñati Institute.
Katzmann, R. A. (1995). The Law Firm and the Public Good. The Brookings Institution.
Kerezsi, K. (2006). Vélemények a bűnről és a büntetésről – egy lakossági attitűdvizsgálat tapasztalatai. In F. Irk (Ed.), Kriminológiai tanulmányok (pp. 203–240). Országos Kriminológiai Intézet.
Kevelson, R. (1988). The Law as a System of Signs. Plenum Press. Online: https://doi.org/10.1007/978-1-4613-0911-6
Kohler, J. (1885). Das Recht als Kulturerscheinung. Würzburg.
Kourilsky, C. (2000). Legal Socialization and Cultural Models: Individual Attitudes Toward Law in France and Russia (pp. 241–253). European Yearbook in the Sociology of Law.
Kourilsky-Augeven, C. (Ed.) (1997). Socialisation juridique et la conscience du droit: Attitudes individuelles, modèles culturels et changement social. LGDJ, Maison des sciences de l'homme, Réseau Européen Droit et Société.
Krygier, M. (2009). The Rule of Law. Legality, Teleology, Sociology. In G. Palombella & N. Walker (Eds.), Relocating the Rule of Law (pp. 45–69). Hart Publishing. Online: https://doi.org/10. 5040/9781472564634.ch-003
Kulcsár, K. (1967). A jogismeret vizsgálata. MTA-JTI.
Kulcsár, K. (1982). Társadalom, gazdaság, jog. Közgazdasági és Jogi Könyvkiadó.
Kurkchiyan, M. (2009). Russian Legal Culture: An Analysis of Adaptive Response to an Institutional Transplant. Law & Social Inquiry, 34(2), 337–364. Online: https://doi.org/10.1111/j.1747-4469.2009.01449.x

Leach, E. (1982). Social Anthropology. Fontana Press.
Lévi-Strauss, C. (1974). Structural Anthropology (2nd ed.). Basic Books.
Llewellyn, K. N. & Hoebel, E. A. (1941). The Cheyenne Way. Conflict and Case Law in Primitive Jurisprudence. University of Oklahoma Press.
Lorenz, K. (1974). The Civilized Man' Eight Deadly Sins. Harcourt Brace Jovanovich, Inc.
Loss, S. (2001). Romani kris a dél-békési oláhcigányoknál. Elmélet és gyakorlat. In M. Szabó (Ed.), Ius Humanum: Az ember alkotta jog (pp. 9–22). Bíbor Kiadó.
Lucy, J. A. (Ed.) (1993). Reflexive Language. Reported Speech and Metapragmatics. Cambridge University Press. Online: https://doi.org/10.1017/CBO9780511621031
Luhmann, N. (1989). Law as a Social System. Northwestern University Law Review, 83(1–2), 136–150.
Luhmann, N. (1992). Operational Closure and Structural Coupling: The Differentiation of the Legal System. Cardozo Law Review, 13, 1419–1441.
Machura, S. & Robson, P. (Eds.) (2001). Law and Film. Blackwell Publishers.
Maine, H. (1861). Ancient Law, Its Connection with the Early History of Society, and Its Relation to Modern Ideas. John Murray.
Malinowski, B. (1926). Crime and Custom in Savage Society. Harcourt, Brace & Company, Inc.
Merry, S. E. (1990). Getting Justice and Getting Even. Legal Consciousness among Working-Class American. Chicago University Press.
Miller, H. V. (Ed.) (2008). Restorative Justice. From Theory to Practice. Sociology of Crime, Law, and Deviance (Vol. 5). Emerald Publishing Ltd. Online: https://doi.org/10.1016/S1521-6136(2008)11
Mnookin, R. H. & Kornhauser, L. (1979). Bargaining in the Shadow of the Law. The Case of Divorce. Yale Law Journal, 88(5), 950–997. Online: https://doi.org/10.2307/795824
Moore, S. F. (1973). Law and Social Change. The Semi-Autonomous Social Field as an Appropriate Subject of Study. Law & Society Review, 7(4), 719–746. Online: https://doi.org/10.2307/3052967
Moore, S. F. (1978). Law as Process. An Anthropological Approach. Routledge & Kegan Paul
Morison, J, Leith, P & Keynes, M. (1991). The Barrister's World and the Nature of Law. Open University Press.
Morrill, C. (2017). Institutional Change Through Interstitial Emergence: The Growth of Alternative Dispute Resolution in American Law, 1965–1995. Revista de Estudos Empíricos em Direito, 4(1), 1–44. Online: https://doi.org/10.19092/reed.v4i1.198
Munger, F. (Ed.) (2006). Law and Poverty. Ashgate.
Murayama, M. (2013). Kawashima and the Changing Focus on Japanese Legal Consciousness. A Selective History of the Sociology of Law in Japan. International Journal of Law in Context, 9(4), 565–589. Online: http://doi.org/10.1017/S174455231300030X
Murayama, M. (2014). Culture, Situation and Behaviour. In D. Vanorverbeke, J. Maesschalk, D. Nelken & S. Parmentier (Eds.), The Changing Role of Law in Japan. Empirical Studies in Culture, Society and Policy Making (pp. 189–205). Edward Elgar Publishing. Online: https://doi.org/10.4337/9781783475650.00021
Nader, L. (1969). Law in Culture and Society. Aldine Publishing Company.
Nader, L. (1990). Harmony Ideology. Justice and Control in a Zapotec Mountain Village. Stanford University Press. Online: https://doi.org/10.1515/9781503621831
Nelken, D. (1995). Disclosing/Invoking Legal Culture: An Introduction. Social & Legal Studies, 4(4), 435–452. Online: https://doi.org/10.1177/096466399500400401
Nelken, D. (1996). Law as Communication: Constituting the Field. In D. Nelken (Ed.), Law as Communication (pp. 3–23). Dartmouth.
Nielsen, L. B. (2000). Situating Legal Consciousness: Experiences and Attitudes of Ordinary Citizens about Law and Street Harassment. Law & Society Review, 34(4), 1055–1090. Online: https://doi.org/10.2307/3115131
O'Barr, W. & Conley, J. M. (1988). Lay Expectations of the Civil Law Justice System. Law and Society Review, 22(11), 137–171. Online: https://doi.org/10.2307/3053564

O'Day, A. (Ed.) (2004). Cyberterrorism. Ashgate.
Peterson-Badali, M. & Abramovitch, R. (1992). Children's Knowledge of the Legal System: Are They Competent to Instruct Legal Counsel? Canadian Journal of Criminology, 34(2), 139–160. Online: https://doi.org/10.3138/cjcrim.34.2.139
Piaget, J. (1932). The Moral Judgment of the Child. Kegan Paul, Trench, Trubner and Co.
Piaget, J. (1936). Origins of Intelligence in the Child. Routledge & Kegan Paul.
Podgórecki, A., Kaupen, W., Houtte, J. van, Vinke, P. & Kutchinsky, B. (1973). Knowledge and Opinion about Law. Martin Robertson.
Podgórecki, A. (1981). Unrecognized Father of Sociology of Law: Leon Petražycki. Reflections Based on Jan Gorecki's Sociology and Jurisprudence of Leon Petražycki. Law & Society Review, 15, 183–202. Online: https://doi.org/10.2307/3053227
Posner, R. A. (1983). The Economics of Justice. Harvard University Press.
Pospíšil, L. (1958). Kapauku Papuans and Their Law. Department of Anthropology, Yale University Press.
Post, A. H. (1886). Einleitung in das Studium der ethnologischen Jurisprudenz. Schwartz.
Pound, R. (1910). Law in Books and Law in Action. American Law Review, 44(1), 12–36.
Pue, W. W. & Sugarman, D. (Eds.) (2003). Lawyers and Vampires. Cultural Histories of Legal Professions. Hart Publishing.
Reifman, A. (1992). Real Jurors' Understanding of the Law in Real Cases. Law and Human Behavior, 16(5), 539–554. Online: https://doi.org/10.1007/BF01044622
Reisman, W. M. (1999). Law in Brief Encounters. Yale University Press.
Roberts, S. (1979). Order and Disputes. An Introduction to Legal Anthropology. Penguin Books.
Róbert, P. & Fekete, B. (2018). Ki ellen nyerne meg ön egy pert? In H. Szilágyi, I. (Ed.), Jogtudat-kutatások Magyarországon 1967–2017 (pp. 303–322). Pázmány Press.
Sajó, A. (1976). Jogi nézetek az egyéni tudatban. Állam- és jogtudomány, 17(3).
Sajó, A., Székelyi, M. & Major, P. (1977). Vizsgálat a fizikai dolgozók jogtudatáról. MTA ÁJTI.
Sajó, A. (1981a). A jogi nézetek rendszere a gazdasági vezetők jogtudatában. Állam- és Jogtudomány, 22(4), 608–638.
Sajó, A. (1981b). A jogtudat mikrokörnyezeti meghatározói. Magyar Tudományos Akadémia Állam-és Jogtudományi Intézete, 1981.
Sajó, A. (1988). A jogosultság-tudat vizsgálata. Kutatási összefoglaló. Magyar Tudományos Akadémia Állam- és Jogtudományi Intézete.
Sajó, A. (2010). Constitutional Sentiments. Yale University Press.
Sampson, R. J. & Bartush, D. J. (1998). Legal Cynicism and (Subcultural?) Tolerance of Deviance: The Neighborhood Context of Racial Differences. Law & Society Review, 32(4), 777–804. Online: https://doi.org/10.2307/827739
Sapiro, V. (2001). Gender Equality in the Public Mind. Women & Politics, 22(1), 1–36. Online: https://doi.org/10.1300/J014v22n01_01
Sarat, A. (1990). "The Law Is All Over": Power, Resistance and Legal Consciousness of Welfare Poor. Yale Journal of Law and Humanities, 2(2), 343–379.
Sarat, A. & Kearns, T. R. (Eds.) (1993). Law in Everyday Life. The University of Michigan Press. Online: https://doi.org/10.3998/mpub.23345
Savelsberg, J. J. (1994): Knowledge, Domination, and Criminal Punishment. American Journal of Sociology, 99(4), 911–943. Online: https://doi.org/10.1177/146247499222702
Savigny, F. C. von [1814] (2002). Of the Vocation of Our Age for Legislation and Jurisprudence (2nd ed.). *The Lawbook Exchange Ltd.*
Schapera, I. (1938). A Handbook of Tswana Law and Custom. Oxford University Press.
Schott, R. (1986). Main Trends in German Ethnological Jurisprudence and Legal Ethnology. Journal of Legal Pluralism and Unofficial Law, 14(20), 37–68. Online: https://doi.org/10.1080/07329113.1982.10756267

Schreiner, A. T. M. (2003). The Ritual Manifesto (eEdition). 1001 Publishers. Online: www.1001publishers.com/index uk.html
Schreiner, A. M. T. (2019). Volgens Aboriginal Recht .../According to Aboriginal Law. 1001 Publishers.
Schwartz, R. D. (1954). Social Factors in the Development of Social Control. A Case Study of Two Israeli Settlements. Yale Law Journal, 63(4), 471–491. Online: https://doi.org/10.2307/793723
Searl, J. R. (1969). Speech Acts. An Essay in the Philosophy of Language. Cambridge University Press. Online: https://doi.org/10.1017/CBO9781139173438
Silbey, S. S. (2001). Legal Culture and Legal Consciousness. In N. J. Smelser & P. B. Baltes (Eds.), International Encyclopedia of the Social and Behavioral Sciences (pp. 8623–8629). Elsevier. Online: https://doi.org/10.1016/B0-08-043076-7/02913-2
Steenhoven, G. van den (1962). Leadership and Law among the Eskimos of the Keewatin District, Northwest Territories. Utgeverij Excelsior.
Strijbosch, F. (1985). The Concept of Pèla and Its Social Significance among Moluccan Immigrants in the Netherlands. Journal of Legal Pluralism, 23, 177–208. Online: https://doi.org/10.1080/07329113.1985.10756291
Styles, I. (2001). Law and the Promotion of Public Interest Lawyering. Law in Context, 19(1–2), 65–88.
Tapp, J. L. & Kohlberg, L. (1971): Developing Senses of Law and Legal Justice. Journal of Social Issues, 27(2), 65–91. Online: https://doi.org/10.1111/j.1540-4560.1971.tb00654.x
Teubner, G. (1993). Law as an Autopoietic System. Blackwell.
Trinkner, R. & Tyler, T. R. (2016). Legal Socialization: Coercion Versus Consent in an Era of Mistrust. Annual Review of Law and Social Science, 12, 417–439. Online: https://doi.org/10.1146/annurev-lawsoscsi-110615-085141
Tiersma, P. & Solan, L. (Eds.) (2012). The Oxford Handbook of Language and Law. Oxford University Press.
Turner, V. (1969). The Ritual Process. Structure and Anti-Structure. Transaction Publishers.
Tyler, T. R. (1990). Why People Obey the Law? Yale University Press.
Tyler, T. R. (2010). Why People Cooperate? The Role of Social Motivations. Princeton University Press. Online: https://doi.org/10.1515/9781400836666
Utasi, Á. (Ed.) (1999). Az ügyvédek hivatásrendje. Új Mandátum.
Utasi, Á. (Ed.) (2016). Ügyvédek a gyorsuló időben (1998–2015). Belvedere Meridionale. Online: https://doi.org/10.14232/belvbook.2016.58526
Valverde, M. (2003). Law's Dream of a Common Knowledge. Princeton University Press.
Vari-Szilagyi, I. (2004). Gender and Legal Socialization. Different Attitudes in Reasoning about the Law among Young Hungarians? Droit et culture, 45, Special Issue, 147–164.
Vígh, J. & Tauber, I. (1983). A bűnözés megelőzése és a jogtudat egyes problémái. In L. Szűk (Ed.): A bűnmegelőzésről (Vol. 1, pp. 64–111). Igazságügyi Minisztérium.
Vidmar, N. (1997). Generic Prejudice and the Presumption of Guilt in Sex Abuse Trials. Law and Human Behavior, 21(1), 5–25. Online: https://doi.org/10.1023/A:1024861925699
Wagner, A. & Bhatia, V. K. (Eds.) (2009). Diversity and Tolerance in Socio-Legal Context. Explorations in the Semiotics of Law. Ashgate. Online: https://doi.org/10.4324/9781315577708
Ward, I. (1995). Law and Literature. Possibilities and Perspective. Cambridge University Press. Online: https://doi.org/10.1017/CBO9780511519260
Wardhaugh, R. (2006). An Introduction to Sociolinguistics (5th ed.). Blackwell Publishing.
Weber, M. (1978). Economy and Society. An Outline of Interpretive Sociology. University of California Press.
White, J. B. (1973). The Legal Imagination. University of Chicago Press.
Wolf, E. R. (2010). Europe and the People Without History (2nd ed.). University of California Press.

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 41–58.

DOI: 10.53116/pgaflr.2022.2.2

The Changes of Japanese Attitude toward Law and Legal System: Comparing the Results of the Survey Conducted in 1976, 2005 and 2022[1]

Manako Kinoshita*

* Full Professor, Doshisha University, Faculty of Law. e-mail: mkinoshi@mail.doshisha.ac.jp

Abstract: This paper compares and analyses the results of a social survey on legal attitudes conducted from January to February 2022 among Japanese citizens (aged 18 or older) nationwide (hereinafter referred to as the 2022 survey) as a follow-up to the 1976 survey and the 2005 survey, which were conducted in previous years.

The 2022 survey focused on three lower-level attitudes that constitute legal attitudes: 1. flexibility; 2. naïve moral sentiment (naïve morality); and 3. severe punishment orientation. First, we examined the attitude toward flexibility, especially the legal attitude toward flexibility in contracts. And we found that the majority of respondents in the 2022 survey, regardless of gender or generation, demanded strictness when concluding contracts, but flexibility when executing contracts. This result is almost the same as in the 1976 and 2005 surveys. Regarding the naïve moral sentiment, a change was observed in the 2022 survey, with a decrease among males aged 60 and over and an increase among females in their 20s. The proportion of each pattern accounted for by the combination of flexibility, naïve moral sentiment and severe punishment orientation in the 2022 survey did not differ significantly from the 1976 and 2005 surveys.

Keywords: Japanese legal attitudes, attitude changes over the years, naïve morality, flexibility of the laws, orientation to severe punishment

1. Purpose

The purpose of this paper is to determine the degree to which the Japanese are familiar with modern Western laws through the social surveys.

Since the transplantation of modern Western laws to Japan in the Meiji era (1868–1912), there has been academic interest in the extent to which Japanese people have

[1] This article is a translation of the paper originally published in Japanese and submitted with the permission of the editors of Public Governance, Administration and Finances Law Review. Some additions, such as questionnaires and tables, and abbreviations have been made to ensure that readers of the English version will understand it. The original article is to be published in the Japanese Law & Society Review (Hou-to Shakai Kenkyu), 8, 2023, in print.

accepted the modern Western laws and what "laws" mean to them. This is the so-called problem of legal succession.

According to Dr. Kawashima,[2] who was one of the founder of Sociology of Law in Japan, wrote in his popular book (Kawashima, 1967, p. 139): "In traditional Japanese legal consciousness, rights and obligations are perceived as something that may or may not exist, and it is not preferred that they be clarified and made definitive." In other words, the Japanese do not understand the relationship between rights and obligations and have a low level of legal consciousness. Furthermore, the Japanese attitude of avoidance of litigation is now used as a factor explaining the low rate of litigation in Japan.[3]

Kawashima's point of view has generated a great deal of academic attention. For example, in 1971 and 1976, the Japan Culture Council (Nihon Bunka Kaigi in Japanese)[4] conducted social surveys to examine Japanese attitudes toward laws (Nihon Bunka Kaigi, 1973; Nihon Bunka Kaigi, 1982).

The social surveys, which were conducted by the Japan Culture Council in 1971 and 1976, were led by Dr. Hayashi,[5] Japanese Statistician. In particular, the 1976 survey focused on three aspects of Japanese people's legal consciousness (Nihon Bunka Kaigi, 1982, p. 65): 1. whether they have a naïve moral sentiment as a value system behind the law (dimension of naïve moral sentiment); 2. whether they consider the law flexible (dimension of flexibility); and 3. what degree of punishment they consider appropriate for crimes (dimension of severe punishment orientation).

According to Hayashi's analysis, there are three typical types of Japanese legal consciousness: 1. a type with a strong sense of naïve morality, and a strong preference for either or both flexibility and severe punishment; 2. a type with a weak sense of naïve morality and a preference for flexibility; and 3. a type with a weak sense of naïve morality, no preference for severe punishment and no preference for flexibility (Nihon Bunka Kaigi, 1982, pp. 65–66).

Hayashi (Nihon Bunka Kaigi, 1982, pp. 67–68) considered that the type with a strong sense of naïve morality, and a strong preference for either or both flexibility, and severe punishment orientation, which is mentioned above as 1, was "the old type of Japanese legal consciousness",[6] since it was common among the elderly. And the type that

[2] Dr. Takeyoshi Kawashima (1909–1992) was a leading civil code scholar and legal sociologist in post-war Japan. Professor Emeritus of the University of Tokyo.

[3] In previous studies, there has been a debate among those who believe that the attitude of Japanese people (not liking litigation) is the cause of the low rate of litigation in Japan (cultural theory), or that institutional factors such as the high cost of litigation or the difficulty of using the system (institutional theory) are the causes. Our survey in 2022 also showed that litigation is not favoured in Japan; however, this paper does not take any one of these two theories. In other words, we see the influence of the system as the main factor affecting the volume of lawsuits, but also the influence of legal attitudes on people's evaluation of the system and the intention to use it.

[4] The Japan Culture Council (Nihon Bunka Kaigi) is a private cultural organisation of conservative intellectuals formed in 1968 and dissolved in 1994.

[5] Dr. Chikio Hayashi (1918–2002) was a Director of the 7th generation of the Institute of Statistics and Mathematical Sciences in Japan.

[6] "The old type pf Japanese legal consciousness" refers to the type with strong naïve moral sentiment, and a strong preference for either or both flexibility and severe punishment orientation, which has three types: a) a type with high naïve moral sentiment, high severe punishment orientation and high flexibility; b) a type with high naïve moral sentiment, low severe punishment orientation and high flexibility; and c) a type with high naïve moral sentiment, high severe punishment orientation and low flexibility.

favours flexibility with a weak naïve moral sentiment (2), was comparatively more common among the younger generation, males, and those with higher education, and was considered to be "the new type of Japanese legal consciousness".[7]

Based on this analysis, it is natural to assume that after the 1976 survey, "the new type of Japanese legal consciousness" will increase and "the old type of Japanese legal consciousness" will decrease. We therefore conducted the 2005 and 2022 surveys as a follow-up to the 1976 survey to verify this prediction.

This paper examined how Japanese attitudes toward "laws" have changed and "What do 'laws' mean to the Japanese?" mainly focusing on Japanese legal attitude from three aspects: 1. Flexible application of laws; 2. Naïve morality; 3. Desire for severe punishment, which Hayashi (Nihon Bunka Kaigi, 1982, pp. 64–68) described.

The concept of "laws" which is used in this paper is a broader conception than the state laws. "Laws" includes not only the laws and regulations enacted by the state, but social norms and "living law" as Eugen Ehrlich (1913) mentioned. As a results, three aspects of Japanese legal attitude are considered to support laws, which are focused in order to understand the people's sentiments toward the state laws, legal institute and social order.

In this paper, we will discuss the "legal attitude" from the perspective of psychology instead of "legal consciousness". The concept of legal attitude used in this paper is based on Hovland's classic definition (Rosenberg & Hovland, 1960, pp. 1–3), which we consider to be composed of cognition, emotion, and behavioural intention. Using this definition, it is possible to empirically clarify the structure of attitudes (Kinoshita, 2021).

2. The survey design

2.1. Design of the survey in 2022

The survey conducted in 2022 in Japan, is one of the projects of the Grant-in-Aid for Scientific Research (B) entitled *The Effects of Legal Socialisation on People's Attitudes towards Contracts.* This work was supported by JSPS KAKENHI Grant Number JP19H01409.

The design of the social survey conducted in 2022 is outlined as follows. The survey population was adults aged 18 and over. The survey was conducted across the whole of Japan. The sampling method was two stage stratified random sampling. We allocated 1,200 subjects for the follow up survey. The number of valid responses was 691 and the valid response rate was 57.6%. The survey was carried out from 14 January to 6 February 2022.

[7] "The new type of Japanese legal consciousness" refers to the type of weak naïve moral sentiment that favours flexibility and has two patterns: (i) a type with low naïve moral sentiment, high severe punishment orientation and high flexibility; and (ii) a type with low naïve moral sentiment, low severe punishment orientation and high flexibility.

2.2. Design of the survey in 1976

The design of the 1976 survey (hereinafter referred to as the 1976 survey) is described below for comparison with the results of the 2022 survey (Nihon Bunka Kaigi, 1982). The population is Japanese people older than 20 years, who live within 30 km area from Tokyo. The sampling method was two stage stratified random sampling. The sample size was 1,500 sample. The valid response was 1,080 and the valid response rate was 72%. The survey was carried out from 11 March to 29 March in 1976.

2.3. Design of the survey in 2005

Matsumura et al. (2007) conducted a social survey from February to March 2005 (hereinafter referred to as the 2005 survey), supported by Grant-in-Aid for Scientific Research in Priority Areas (B) *Dispute Resolution and Civil Justice in the Legalising Society* (Leader: Dr. Murayama, Masayuki) of the Ministry of Education, Culture, Sports, Science and Technology.

The population was Japanese aged between 20 and 70 years. The sampling method was two stage stratified random sampling, and the sample size was 2,274. The number of sampling points was 1,137, and the number of persons sampled per point was 22. The sampling period was from December 2004 to January 2005. The sampling period was from December 2004 to January 2005. The number of valid responses was 50.0% (1,138 samples).

3. Demographics of respondents

3.1. Demographics of respondents in the 2022 survey

Because the sample size for the 2022 survey is smaller than that of the 2005 survey, the question is whether the survey is representative. Therefore, we compare the valid responses from the collected sample (the "valid sample") with the results assigned by sampling (the "design sample").

First, in terms of gender, 47.9% of the valid response sample was male and 52.1% was female, while 47.3% of the design sample was male and 52.7% was female.

In terms of age structure, the number of respondents aged 18, 19 and 90 or older was small in both the valid sample and the design sample, and the percentage of respondents in other age groups ranged from 8% to 20%.

The proportions of the 21 largest cities in Japan and other cities and towns were almost the same in the valid response sample and the design sample.

In sum, the valid sample is well representative of the design sample in terms of gender, age and residence of the respondents. Although the sample size was small, we believe we were able to conduct an academically valid survey.

3.2. Sample of 30 kilometres in the Tokyo metropolitan area

The 1976 survey covered people living within 30 kilometres of the Tokyo metropolitan area. On the other hand, the 2022 survey covered all residents in Japan, so the question arises whether it is appropriate to compare the two surveys.

The results of the 2022 survey, which covered only residents living within 30 kilometres of the Tokyo metropolitan area, showed no significant differences in the distribution of responses to each question. Therefore, we will compare the 1976 and 2022 surveys, assuming that there is no significant difference in the overall trend between the national sample of adults in Japan and the sample restricted to a 30-kilometre radius.

4. The results: Changes from 1976 to 2022

4.1. Three dimensions of Japanese people's legal attitudes

As mentioned above, mainly three dimensions are highlighted in this paper. The first dimension is the flexible application of laws (or flexibility of norms), which indicate the people's ideas regarding how strict and rigid norms, particularly contracts, should be. Second is naïve morality (or naïve moral sentiment). And the last one is regarding their orientation to severe punishment.

4.2. The orientation to flexible application of laws

4.2.1. Characteristics of attitudes toward contracts

According to Kawashima (1967, p. 45), in Japanese society, a compromise is expected between the reality of morality and laws, and the reality of human spirit and social lives. Such a form of compromise with reality is highly valued as a "flexible" attitude.

First, let us look at changes in attitudes toward contracts over time (Table 1). When asked: (Q 12[8]) "What do you do when a contract you once signed is no longer suitable for your actual situation after a number of years? Which of the following two statements is closer to your opinion?", 61.7% of the respondents in the 1976 survey, 64.3% in the 2005 survey, and 72.8% in the 2022 survey answered: "When the contents of the contract has turned unsuitable for the current reality, we should discuss and correct it so that we do not have to observe the inappropriate contract". Although there was a slight increase, there was no change in the overall trend. The other option: "The contract which you have signed once must be observed even when it has turned unsuitable for the current reality", accounted for 16.7% in the 2022 survey, down from nearly half of the 1976 survey.

[8] Question numbers are those used in the survey questionnaire in this article.

Table 1.
Responses to the Q 12 questions of the survey questionnaire in 1976, 2005, 2022

Choices	**1976**	**2005**	**2022**
1 The contract which you have signed once must be observed even when it has turned unsuitable for the current reality.	31.7	23.0	16.7
2 When the contents of the contract has turned unsuitable for the current reality, we should discuss and correct it so that we do not have to observe the inappropriate contract.	61.7	64.3	72.8
3 Do not know.	6.6	12.8	10.5
Total (%)	100.0	100.0	100.0
(N)		(1,136)	(687)

Source: Compiled by the author.

On the other hand, nearly 90% of the respondents in the 1976, 2005 and 2022 surveys answered that "When making a contract, the contents should be as concrete and detailed as possible to avoid future disagreement over the interpretation", while fewer than 10% of the respondents answered that "Contracts are only formalities. So when making a contract, the contents of the contract should be as simple as possible and the expressions should be as flexible as possible" (Table 2).

Table 2.
Responses to the Q13 question of the survey questionnaire in 1976, 2005, 2022

Choices	**1976**	**2005**	**2022**
1 Contracts are only formalities. So when making acontract, the contents of the contract should be assimple as possible and the expressions should be asflexible as possible.	6.3	4.7	4.2
2 When making a contract, the contents should be asconcrete and detailed as possible to avoid futuredisagreement over the interpretation.	89.1	87.6	89.3
3 Do not know.	4.7	7.7	6.4
Total (%)	100.0	100.0	100.0
(N)		(1,129)	(685)

Source: Compiled by the author.

This attitude toward contracts was "stable" (Hayashi, 1982, pp. 13–17) in the analysis of the 1976 survey, and it was predicted that "the distinction between formal and real intention, where formally it is a neat decision, but in reality, it is Japanese-style and flexible" would not change significantly in the future. The fact that the answers to the two questions regarding the time of execution and the time of making a contract are compatible is one of the characteristics of Japanese people's thinking about contracts.

4.2.2. Changes in responses on flexibility

According to Kawashima (1967, p. 45), in Japanese society, a compromise is expected between the reality of the human spirit and social life, and the reality of morality and laws. Such a form of compromise with reality is highly valued as a "flexible" attitude.

Let us see how this "flexible" attitude has changed in situations other than contracts.

Four questions were asked to measure what people think about the flexibility of norms. In the original 1976 questionnaire, six questions were asked, but two were deleted because they were not in accordance with contemporary human rights attitudes. As a result, four questions are compared.

The questions on the flexibility of the norms are as follows. The choices marked with an asterisk in each question are those that indicate a strict attitude.

Q 5 **National property.** There are miscellaneous trees which would suit your garden such as azaleas and wisterias in a national forest. But there is a sign saying: "Keep off the national property." A and B have different opinions on this. Which opinion is closer to yours?

1 Closer to A: "We may take a few of them with us because those will be soon cut down as miscellaneous trees anyway."

*2 Closer to B: "We should not take any of them with us as long as there is a sign saying 'Keep off the national property', even if those will be soon cut down as miscellaneous trees."

Q 6 **Vacant land.** There is a vacant land in your neighbourhood. This is A's private property. Children in the neighbourhood come here and play baseball. A always tells them: "Don't play here in my land." But the children would not listen to him. A and B from this neighbourhood have different opinions on this problem. Which opinion is closer to yours?

1 Closer to A: "As this is an idle lot at the moment, it is OK that children play there."

*2 Closer to B: "Even if this is an idle lot at the moment, we should not use this private property without the permission of the landowner."

Q 10 **Public employees.** There are two types of public employees. Which type do you prefer?

*1 I prefer A who always applies the law strictly as it is written for whatever and whenever.

2 I prefer B who tries to apply the law flexibly considering what the law really means.

Q 11 **Legal application.** There are two different opinions on law. Which opinion is closer to yours?

*1 Closer to A. A: "Law exists to be observed. So when someone violates it, he/she must be punished without exceptions."

2 Closer to B. B: "Law should be interpreted every time according to the case. And it should not be interpreted word for word."

The results of the 2022 survey (Table 3) show that among these four questions, a high percentage of the respondents prefer strictness. In case of the Q 5 question, 90% of the respondents in 2022 chose "Keep off the national property" (Choice 2). And in the Q 6 question, 80% of the respondents in 2022 chose "We should not use this private property without the permission of the landowner" (Choice 2). Particularly the percentage of respondents who think that "we should not use this private property without the permission of the landowner" increased in the 2022 survey compared to the 1976 survey.

On the other hand, with regard to the application of the law, choices which indicate strictness were not preferred. The percentage who chose "I prefer A who always applies the law strictly as it is written for whatever and whenever (Choice 1 at Q 10)" was 11% in the 2022 survey. And the percentage who chose "Law exists to be observed. So when someone violates it, he/she must be punished without exceptions (Choice 1 at Q 11)" was 26% in the 2022 survey. The tendency to dislike strictness when applying the law has been consistently strong since the 1976 survey and has not changed significantly.

Table 3.
People's attitude towards property rights

Percentage of the following choices in each question (%)		**Male**			**Female**			**Total**		
		1976	**2005**	**2022**	**1976**	**2005**	**2022**	**1976**	**2005**	**2022**
Q5 National property	2 Keep off the national property	83	81	88	87	86	92	85	84	90
Q6 Vacant land	2 We should not use thisprivate property without apermission of the landowner	52	64	77	60	70	83	56	67	80
Q10 Public employees	1 Applies the law strictly	18	15	14	21	16	9	20	15	11
Q11 Legal application	1 Punished without exceptions	24	24	29	28	25	23	26	25	26

Source: Compiled by the author.

4.2.3. Summary of the attitude toward flexibility

In summary, in the 2022 survey, there is no difference in the distribution of flexibility by gender and age. At least in the 1976, 2005 and 2022 surveys, respondents tended to view property rights such as entry to vacant lots strictly. On the other hand, the respondents tended to prefer "flexible" application of contracts and laws. In particular, with regard to contracts, there was a tendency to favour strict content at the time of conclusion, but flexible operation at the time of performance. It is not clear whether these attitudes toward flexibility change under the influence of social conditions, so it is necessary to continue to conduct surveys in the future.

4.3. The orientation to naïve morality

4.3.1. What is the orientation to naïve morality?

Naïve morality (naïve moral sentiments) are considered to be the criteria by which Japanese people judge "rightness" in their daily lives (Nihon Bunka Kaigi 1982, pp. 45–46). They are the values that one expects to find at the root of a person's mind, a naïve and simple sense of justice and causal justice. This concept is presumably related to Lerner's (1980) *Just World Theory* in social psychology (Matsumura et al., 2007). From a modern perspective, these questions may seem too simple. This is based on the assumption that people's judgement of "right" is based on naïve and emotional values. Naïve morality is also thought to be related to ancient Japanese customs and lifestyles, such as belief in Shinto and Buddha and ancestor worship. They are a type of social norm and are used as a criterion to judge whether everyday behaviour is correct.

4.3.2. Changes in responses on naïve morality

The questions of naïve morality are composed with six questions, which are originally made by Dr. Hayashi and his co-researchers for the survey in 1976 (Nihon Bunka Kaigi, 1982). The questions on the naïve morality are as follows.

Q 22 (1) Do you think that we will have to suffer for our past evil deeds?

Q 22 (3) Do you think that the gods know whatever we do, when we do good and when we do bad?

Q 22 (4) Do you believe in human curses?

Q 22 (5) Do you think that you must lead a decent life so that you are not ashamed of yourself in front of your ancestors?

Q 22 (8) There is a conventional belief from old times that tells you if you do something evil, your descendants will have to get the punishment, if not you. Do you agree or disagree with this?

Q 22 (9) People often say "He that will lie will steal." Do you think this is true or not?

Let us take a look at the tendency of how Japanese people have naïve morality.

First, question Q 22 (1) "Do you think that we will have to suffer for our past evil deeds?" Around 80% of the respondents answered "yes" to this question (Table 4), which has not changed from 2005. To question Q 22 (3) "Do you think that the gods know whatever we do, when we do good and when we do bad?" 61.0% of the people responded that they agree or somewhat agree to this question, which is almost the same as the result of the 2005 survey (Table 5).

Table 4.
Responses to the Q 22 (1) question of the survey questionnaire in 1976, 2005, 2022

Choices	**1976**	**2005**	**2022**
1 Yes.	57.6	83.3	83.3
2 No.	40.5	16.7	16.7
Total (%)	100.0	100.0	100.0
(N)		(1,133)	(678)

Source: Compiled by the author.

Table 5.
Responses to the Q 22 (3) question of the survey questionnaire in 1976, 2005, 2022

Choices	**1976**	**2005**	**2022**
1 Think so.	26.2	33.2	26.5
2 Think so a little.	16.8	30.1	34.5
3 Do not think so much.	19.7	20.7	21.0
4 Do not think so.	35.7	16.0	18.0
Total (%)	100.0	100.0	100.0
(N)		(1,132)	(690)

Source: Compiled by the author.

The scale was made using these six questions. Specifically, if the response is "yes" or "think so" to each question, one point is given and added to the total scores. Therefore, on the naïve morality scale, the lowest total score is zero points and the highest is six points. The higher the score, the stronger the sense of naïve morality is, so a person with a score of six is considered to have an "extremely naïve morality".

Table 6.
Changes in the naïve morality scale in 1976, 2005, 2022

	Male														
Naïve Morality Scale	**20s**			**30s**			**40s**			**50s**			**60s**		
	1976	**2005**	**2022**	**1976**	**2005**	**2022**	**1976**	**2005**	**2022**	**1976**	**2005**	**2022**	**1976**	**2005**	**2022**
0	26.1	14.0	8.0	22.1	8.0	12.2	14.1	9.1	7.9	12.5	9.7	5.9	3.1	10.3	12.9
1	26.1	21.1	24.0	19.1	21.3	17.1	25.9	20.2	15.9	18.7	17.4	9.8	14.1	12.3	22.6
2	20.0	22.8	40.0	25.0	18.7	29.3	23.5	11.1	19.0	12.5	20.0	27.5	21.9	16.8	19.4
3	13.9	15.8	0.0	14.0	25.3	14.6	16.5	18.2	23.8	18.7	13.5	17.6	12.5	17.4	25.8
4	6.1	17.5	16.0	8.1	12.0	14.6	7.1	23.2	11.1	10.4	17.4	15.7	25.0	16.1	6.5
5	5.2	8.8	8.0	8.1	6.7	4.9	5.9	5.1	12.7	14.6	12.3	13.7	14.1	17.4	6.5
6	2.6	0.0	4.0	2.9	8.0	7.3	7.1	13.1	9.5	12.5	9.7	9.8	9.4	9.7	6.5
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Female															
Naïve Morality Scale	20s			30s			40s			50s			60s		
	1976	2005	2022	1976	2005	2022	1976	2005	2022	1976	2005	2022	1976	2005	2022
0	13.7	1.9	2.9	12.7	3.1	2.5	14.6	8.3	7.4	3.3	11.3	7.1	6.9	4.7	8.1
1	24.2	17.0	14.3	13.5	13.4	15.0	11.4	13.0	16.2	15.0	12.0	28.6	5.6	7.6	27.4
2	24.2	24.5	22.9	18.3	21.6	37.5	22.0	15.7	29.4	20.0	14.8	14.3	18.1	11.1	17.7
3	14.7	24.5	17.1	20.6	16.5	17.5	15.4	23.1	19.1	10.0	14.8	16.1	15.3	15.2	17.7
4	16.8	11.3	25.7	18.3	22.7	12.5	15.4	10.2	10.3	20.0	20.4	12.5	13.9	21.1	12.9
5	2.1	15.1	14.3	9.5	13.4	7.5	10.6	14.8	4.4	13.3	11.3	14.3	18.1	22.8	14.5
6	4.2	5.7	2.9	7.1	9.3	7.5	10.6	14.8	13.2	18.3	15.5	7.1	22.2	17.5	1.6
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Compiled by the author.

Table 6 shows how naïve morality changed in 1976, 2005 and 2022, by gender and age, using the naïve morality scale. Compared to the 2005 survey, the 2022 survey shows that, in general, both men and women do not have strong naïve moral sentiments.

First, let us look at the distribution of the males scale in the 2022 survey. In their 20s, 8.0% scored 0, 24.0% scored 1 and 40.0% scored 2. In their 50s, the number of respondents scoring 4 or more increased by about 10 points, but in their 60s, the number scoring 4 or more decreased again.

Next, looking at females in the 2022 survey, a total of 42.9% of females in their 20s scored 4 or more points. For those in their 30s and older, that figure drops by around 10 percentage points. In particular, 29.0% of the respondents in their 60s gave a score of 4 or more.

Figure 1 visualises these changes in the scale by year of the survey. In this figure, the horizontal axis of the graph is age and the vertical axis is the percentage of the total number of respondents who added up the number of respondents who scored 4, 5 or 6 on the naïve morality scale.

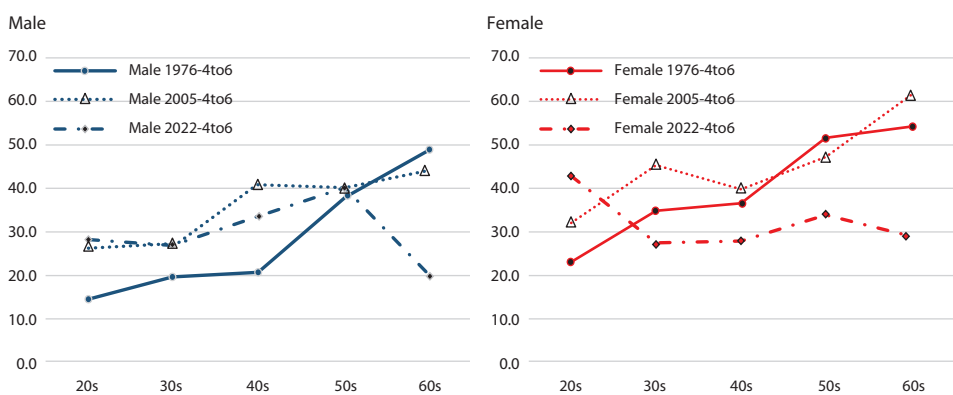


Figure 1.
Changes of added score 4+5+6 of naïve morality, by gender and age in the 1976, 2005, 2022 surveys

First looking at males, in the 1976 and 2005 surveys, naïve morality increased with age, and was highest among males in their 60s. In the 2022 survey, it also increased among males in their 20s through 50s, but suddenly dropped to a low level among males in their 60s, indicating a different trend to other surveys.

Next, looking at female respondents, in the 1976 and 2005 surveys, naïve morality generally increased with age, and was highest among females in their 60s. On the other hand, the 2022 survey shows a high rate for female in their 20s, but a drop of about 10 points for those in their 30s and older, and no significant increase even for those in their 60s and older, although there is some increase or decrease in the rate.

We examined whether the change in naïve moral sentiment with age was generational or age-related. 17 years separated the 2005 and 2022 surveys, so the data cannot be simply compared at 10-year increments. However, comparing the 2005 and 2022 surveys, which assumed that most males in their 30s in 2005 would be in their 50s in 2022, 17 years later, we found that males in their 50s in 2022 showed higher naïve morality. On the other hand, the naïve morality of females in their 50s in 2022 was lower than that of females in their 30s in 2005. In the past, this was an increase with age, but this was not the case for the females in the 2022 survey. This suggests that the effect of aging on naïve morality was observed in males in the 2022 survey, but that factors other than aging had an effect on it in the females' data.

4.3.3. Summary of the attitude toward naïve morality

The 1976 and 2005 surveys showed that females in general had stronger naïve moral sentiment than males, but this was not necessarily the case in the 2022 survey, which showed a different trend from the previous surveys. In particular, the 2022 survey showed that males in their 60s had lower naïve moral sentiment and females in their 20s had higher naïve moral sentiment, which is interesting given the large difference between males and females in their 20s in the 2022 survey.

4.4. The orientation to severe punishment

4.4.1. What is the orientation to severe punishment?

Finally, the scale of severe punishment orientation is examined. The orientation to severe punishment literally means the idea that punishment should be severely imposed. The survey included two types of questions: those that asked about the severity of punishment for minor offenses and those that asked about the severity of punishment for more serious offenses, including those punishable by the death penalty. The severe punishment orientation scale used in the analysis in this paper is the latter (the severity of punishment for more serious offenses).

To begin with, the 1976 survey (Nihon Bunka Kaigi, 1982, p. 17) stated that the Japanese society is characterised by "what might be called a paternalism towards the law".

This is also shown in the data: 74.0% of the respondents in the 1976 survey thought that "punishment is not intended to punish, but to rehabilitate (Q 36, Choice 2)". However, in the 2005 survey, 52.1% of the respondents thought so, and in the 2022 survey, 57.6% thought so, indicating a decrease in the number of those with a paternalistic view.

However, the 2005 and 2022 surveys do not indicate that people's views have simply become more severely punitive.

For example, there has been no significant change in attitudes toward the death penalty, with 82.1% of the respondents in the 1976 survey, 86.2% in the 2005 survey and 82.5% in the 2022 survey indicating that "the death penalty is unavoidable in some cases (Table 7: Choice 2 in Q 30)".

Table 7.
Responses to the Q 30 question in 1976, 2005, 2022

Choices	**1976**	**2005**	**2022**
1 Abolish in any circumstances.	12.2	5.2	4.8
2 Unavoidable in some cases.	82.1	86.2	82.5
3 Do not know.	5.6	8.6	12.7
Total (%)	100.0	100.0	100.0
(N)		(1,129)	(687)

Source: Compiled by the author.

Looking at Q 31, which asked respondents about their thoughts pertaining to misjudgement: "Given a hundred people, ninety-nine of them actually committed a crime, but one did not commit a crime and is innocent" (Table 8). In the 2022 survey, 28.7% of the respondents chose the answer "save the innocent one from being punished", while 42.4% said "it depends on the kind of crime". On this question, 37.8% of the respondents in the 1976 survey, and 31.7% in the 2005 survey thought that one innocent person should be saved. It is interesting to note that the percentage of respondents who answered: "It depends on the type of crime", has increased from 1976 to the present.

Table 8.
Responses to the Q 30 question in 1976, 2005, 2022

Choices	**1976**	**2005**	**2022**
1 Save the innocent one from being punished.	37.8	31.7	28.7
2 Sacrificing just one is inevitable.	19.3	3.5	2.8
3 Depending on the kind of crime.	19.7	37.3	42.4
4 Do not know.	23.3	27.5	26.2
Total (%)	100.0	100.0	100.0
(N)		(1,130)	(687)

Source: Compiled by the author.

Further, in the question asking about the severity of the punishment, 31.5% of the respondents in the 1976 survey answered that the punishment was "just appropriate" (Choice 3 in Q 32), while the percentage dropped to 7.8% in the 2005 survey, but increased by about 10 points to 17.9% in the 2022 survey. The percentage of respondents who answered "too loose" (Choice 5 of Q 32) was 18.7% in the 1976 survey and increased by about 15 points to 33.4% in the 2005 survey, but decreased by about 15 points to 18.9% in the 2022 survey. In other words, the 2005 survey showed a stronger preference for harsher punishment than the other surveys.

4.4.2. Changes in responses on the orientation to severe punishment

The orientation to severe punishment scale consists of the five questions listed below. Specifically, for each question, one point was given for each choice (marked with an asterisk in each question choice below) that was considered to have a strong severe punishment orientation, and the total score was used as the score. Thus, the scale took scores from zero to five, with higher scores meaning more severe punishment orientation, and a score of five meaning the most severe punishment orientation.

The questionnaires on the orientation to severe punishment are as follows.

Q 30 Do you think the death penalty should be abolished in any circumstances or it is unavoidable in some cases?

1 Abolish in any circumstances.
*2 Unavoidable in some cases.
3 Do not know.

Q 31 Suppose there are one hundred people. Ninety nine of them actually committed a crime, but one of them did not and he/she was innocent. There are two opinions on this.

A's opinion: "Penalising this innocent person by mistake is a more serious problem than overlooking the other 99 criminals. So in order to save the innocent one, it is inevitable that the 99 criminals go free."

B's opinion: "I feel sorry for the innocent person, but if we let out the other 99 criminals, the social order cannot be maintained. So it is inevitable that all of the 100 people are penalised."

1 Save the innocent one from being punished.
*2 Sacrificing just one is inevitable.
3 Depending on the kind of crime.
4 Do not know.

Q 32 Do you think penalties imposed on criminals in Japan are too heavy or too light?

1 Too severe.
2 Slightly too severe.
3 Appropriate.
*4 Slightly too lenient.
*5 Lenient.
6 Do not know.

Q 35 There are two opinions about how the people serving in prison are treated. In short, which opinion is closer to yours?

*1 Prisoners should be punished strictly for their crime. There is not much need to improve the conditions.
2 Prisoners should be treated in a humane and considerate way.
3 Do not know.

Q 36 Generally speaking, there are two opposed opinions on the purpose of imposing criminal punishment. Which opinion do you agree with?

*1 The punishment is imposed in order to chasten criminals for what they did.
2 The punishment is imposed in order to rehabilitate criminals and help them readjust to society.
3 Do not know.

Let us look at the overall trends in the scales created from these questions. Table 9 shows how the scales created from these questionnaires changed by sex and age in the 1976, 2005 and 2022 surveys.

Table 9.
Changes of desire for severe punishment in 1976, 2005 and 2022

Male															
Naïve Morality Scale	20s			30s			40s			50s			60s		
	1976	2005	2022	1976	2005	2022	1976	2005	2022	1976	2005	2022	1976	2005	2022
0	15.7	8.8	16.0	11.8	4.0	7.3	4.7	12.2	12.7	2.1	5.7	3.9	6.3	3.8	6.5
1	34.8	12.3	4.0	27.9	16.0	22.0	22.4	7.1	11.1	35.4	15.1	21.6	25.0	14.1	25.8
2	26.1	31.6	44.0	27.9	20.0	22.0	37.6	20.4	31.7	22.9	25.2	23.5	31.3	35.9	30.6
3	14.8	29.8	24.0	21.3	38.7	26.8	20.0	24.5	25.4	27.1	27.7	21.6	29.7	28.8	24.2
4	8.7	15.8	12.0	10.3	21.3	22.0	12.9	33.7	19.0	10.4	23.9	27.5	7.8	16.7	12.9
5	0.0	1.8	0.0	0.7	0.0	0.0	2.4	2.0	0.0	2.1	2.5	2.0	0.0	0.6	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Female															
Naïve Morality Scale	20s			30s			40s			50s			60s		
	1976	2005	2022	1976	2005	2022	1976	2005	2022	1976	2005	2022	1976	2005	2022
0	17.9	3.6	8.6	7.9	7.1	5.0	8.1	7.4	10.3	11.7	8.4	12.5	8.3	7.0	9.7
1	30.5	25.5	48.6	27.8	14.3	27.5	29.3	25.9	26.5	33.3	17.5	23.2	41.7	17.5	37.1
2	30.5	29.1	14.3	37.3	25.5	30.0	31.7	27.8	26.5	26.7	31.5	21.4	26.4	28.7	24.2
3	16.8	18.2	25.7	23.8	29.6	27.5	21.1	20.4	23.5	20.0	26.6	26.8	15.3	26.9	19.4
4	3.2	21.8	0.0	3.2	22.4	7.5	8.9	18.5	13.2	5.0	15.4	14.3	8.3	19.9	9.7
5	1.1	1.8	2.9	0.0	1.0	2.5	0.8	0.0	0.0	3.3	0.7	1.8	0.0	0.0	0.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Compiled by the author.

The following graph (Figure 2) visualises these changes in the 1976, 2005 and 2022 surveys by summing the percentages of those who obtained scores of 4 and 5 on the severe punishment orientation scale. The horizontal axis of the graph is age and the vertical axis is the percentage of people with a severe punishment orientation score of 4 and 5. The higher the score, the more severe the punishment orientation.

As can be seen from the graph, the peak for males was in their 50s in the 2022 survey. In the 2005 survey, the peak was in their 40s, and the number of males in their 60s or older decreased. On the other hand, for females, the 2022 survey shows a peak in the 50s and a decrease in the 60s, while the 2005 survey shows the lowest value in the 50s, followed by an increase. In the 1976 survey, the proportion of high scorers for severe punishment was very small for both males and females, and the change with age was smaller than in the other surveys.

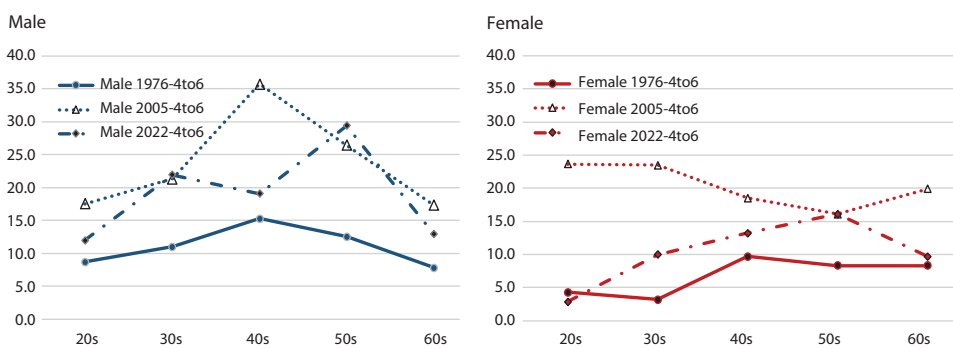


Figure 2.
Changes of added score 4+5 of severe punishment, by gender and age in the 1976, 2005, 2022 surveys

Thus the respondents of the survey in 2005 think punishments to the criminals should be more severe than those in 1976 and 2022 surveys. We have to be careful to interpret the data, as to whether the support of harsh treatment might be the very recent tendency within the last several years, or a more deeply rooted idea among Japanese.

4.4.3. Summary of the attitude toward the orientation to severe punishment

In sum, in the 1976, 2005 and 2022 surveys, males were generally more severely punished than females. Both males and females were more inclined toward severe punishment in the 2005 survey than in the 1976 and 2022 surveys. In all surveys, as a rule, both males and females in their 40s and 50s were more severely inclined toward punishment, but this tendency decreased when they were in their 60s. However, in the 2005 survey, females in their 20s were the most severely punishment-oriented. This suggests that aging may have a significant effect on the change in the intention to impose severe punishment, but it is also influenced by the changing times.

5. Conclusion

Finally, let us examine whether the prediction made at the beginning of this paper, that the "new type of Japanese legal consciousness" would increase and the "old type of Japanese legal consciousness" would decrease, has proved to be correct. As mentioned above (footnotes 7 and 8), Hayashi (Nihon Bunka Kaigi, 1982, pp. 64–68) referred to the type with strong naïve moral sentiment, and a strong preference for either or both flexibility and severe punishment orientation as "the old type pf Japanese legal consciousness", while the type of weak naïve moral sentiment that favours flexibility was referred to as "the new type of Japanese legal consciousness".

For reasons of space, the table has been omitted, but "the new type of Japanese legal consciousness" has decreased from 27% in the 1976 survey to 18% in the 2022 survey.[9] Further, "the old type pf Japanese legal consciousness" accounted for 62% of the total in the 1976 survey, 70% in the 2005 survey and 63% in the 2022 survey,[10] with a slight increase in the 2005 survey, but little changes.[11] In other words, the type that Hayashi described in his analysis of the 1976 survey as "the old type of Japanese legal consciousness" still predominates in the 2022 survey, and our earlier prediction does not appear to have been correct.

[9] These percentage is the summation of (i) and (ii) mentioned in footnote 8.

[10] These percentage is the summation of a), b) and c), mentioned in footnote 7.

[11] The 2005 and 2022 surveys cannot produce exactly the same scale because the two questions that made up the flexibility scale in the 1976 survey were deleted. Hayashi (Nihon Bunka Kaigi, 1982, p. 55) treated only those with flexibility scales of 0 and 1 as inflexible, so we followed his lead and calculated only those with scales of 0 and 1 as inflexible in the 2005 and 2022 surveys.

There is no correlation among the three scales of naïve morality, flexibility and severe punishment orientation, and each of these three scales independently captures the Japanese people's evaluation of correctness and feeling of justice. Regardless, the scale Hayashi has created should prove useful for continuously measuring the Japanese people's legal attitudes.

As shown in this paper, a consistent trend has been observed since the 1976 survey with regard to flexibility, particularly with regard to flexibility in applying contracts. Whether this attitude also applies to the general public (non-lawyers) in other countries remains to be examined. Although only hypothetical, it may be that Japanese people avoid confrontation with others and prefer flexible solutions and flexible contract enforcement, preferably through discussion. People expect that a flexible solution will not have a disadvantageous outcome for them. And because people want social order to be maintained, but do not want to be hard on themselves, they will prefer flexible application of the law.

In this survey, we investigated attitudes toward contracts at an abstract level. In the future, it will be necessary to study whether people's legal attitudes differ with respect to specific conditions, such as labour, sales and so on. Furthermore, it is necessary to investigate whether changes in social conditions, such as the increase in online contracts instead of face-to-face contracts, affect people's attitudes toward contracts, and this will need to be investigated on an ongoing basis.

References

Ehrlich, E. (1913). Grundlegung der Soziologie des Rechts. Duncker & Humblot.

Kawashima, T. (1967). Nihon-jin no Houishiki [Japanese Legal Consciousness]. Iwanami Shoten.

Kinoshita, M. (2010). Nihonjin-no Hou-ni-taisuru Taido-no Kouzou-to-Henyo: 30nenkan-de Hitobitono Kangaekata-ha Donoouni Henka-shitaka [The Structure and Transformation of Japanese Attitudes Toward the Law: How Have People's Attitudes Changed over the Past 30 Years?]. In M. Murayama & M. Matsumura (Eds.), Hou-Ishiki to Hunsoukoudou (pp. 3–22). Tokyo University Press.

Kinoshita, M. (2021). Hou-wo Tsukamaeru: Houishiki Kenkyu kara Houtaido Kenkyu-e [Grasping Laws: From the Study of Legal Consciousness to the Study of Legal Attitude]. Hou-to Shakai Kenkyu, 6, 33–57.

Lerner, M. J. (1980). The Belief in a Just World. A Fundamental Delusion. Perspectives in Social Psychology. Plenum Press.

Matsumura, Y., Kinoshita, M., Fujimoto, A., Yamada, H., Fujita, M. & Kobayashi, C. (2007). What are the Changes in Attitudes of Japanese People Toward the Law and the Legal System? Surveyed in 1971, 1976, and 2005. Chiba Journal of Law and Politics, 22(3), 112(1)-61(52).

Nihon Bunka Kaigi (Ed.) (1973). Nihonjin No Houishiki [Japanese Legal Consciousness]. Shiseido.

Nihon Bunka Kaigi (Ed.) (1982). Gendai Nihonjin no Hou-Ishiki [Modern Japanese Legal Consciousness]. Diichi-houki.

Rosenberg, H. J. & Hovland, C. I. (1960). Cognitive, Affective, and Behavioral Components of Attitudes. In M. J. Rosenberg & C. I. Hovland (Eds.), Attitude Organization and Change: An Analysis of Consistency among Attitude Components (pp. 1–14). Yale University Press.

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 59–89.

DOI: 10.53116/pgaflr.2022.2.3

Public Perception of the Hungarian Local Government Reform

Results of an Empirical Study

Attila Badó*, Gábor Feleky**

* Full Professor, Head of the Institute for Comparative Law and Legal Theory, University of Szeged, e-mail: bado@juris.u-szeged.hu

** Associate Professor, Head of the Department of Sociology, University of Szeged, e-mail: feleky45@gmail.com

Abstract: Following a change of government in 2010, the Hungarian local government system underwent a period of significant transformation. The question of how it is viewed and the effects it may have are currently being debated. The centralising effort of the government had already become clear beyond a shadow of a doubt before the adoption of the Cardinal Act or the Fundamental Law (2011) itself. This was followed by the steps of the local government reform, which transferred many local government powers to the state. Municipalities lost influence over local public education institutions, municipal hospitals and many other areas. In this situation, where there was a significant loss of influence by local elites, it became an interesting question to what extent this changed society's relationship with local government. Our comprehensive research has conducted a number of quantitative and qualitative studies to answer this question. Between 2016 and 2018, our research group had the opportunity to conduct four empirical studies to assess knowledge, attitudes and opinions related to local government. This paper presents and interprets the results of this research, and an important area of public attitudes towards local government, in particular with regard to the division of responsibilities between the state and municipalities.

Keywords: local government, empirical studies, reform, centralising efforts

In 2017, we set out to map the decision-making mechanisms of Hungarian local governments. Our aim was, among other things, to conduct a legal sociological study of the decision-making mechanisms of local governments and the effects of decisions on citizens that are made on the basis of these mechanisms, in order to provide an empirically verified picture of the mechanisms of the recent past. It was hoped that the results of this empirical study, based on the methods of legal historical experience and modern legal studies, would provide us with a unique body of knowledge on the social perceptions of decisions in relation to the decision-making mechanisms of local governments, which could enrich the literature on local government and help any

legislative reform. Following a change of government in 2010, the Hungarian local government system underwent a period of significant transformation. The question of how it is viewed and the effects it may have are currently being debated. However, the fact that 2011 saw a reform of a more than a 20-year-old unyielding system seems difficult to argue with. Laced with the democratic ideal of self-government, the Hungarian regime change of 1989 resulted in a fragmented local government system with a considerable degree of management authority. The local government model opted for by Hungary, which can indeed be dubbed as the champion of decentralisation, could function uninterruptedly until 2010 with minor adjustments.

The centralising effort of the government had already become clear beyond a shadow of a doubt before the adoption of the Cardinal Act or the Fundamental Law (2011) itself. This was followed by the steps of the local government reform, which transferred many local government powers to the state. Municipalities lost influence over local public education institutions, municipal hospitals and many other areas. In this situation, where there was a significant loss of influence by local elites, it became an interesting question to what extent this changed society's relationship with local government. Our comprehensive research has conducted a number of quantitative and qualitative studies to answer this question. Between 2016 and 2018, our research group[1] had the opportunity to conduct four empirical studies to assess knowledge, attitudes and opinions related to local government.

1. National research. A questionnaire was developed to analyse the Hungarian local government system, in which specific questions were assigned to examine the research objectives. Due to limited financial resources and in order to ensure representativeness, we opted for the omnibus method, which was carried out by the public opinion research company Szonda Ipsos. The technical content of the survey was defined so that the population was the adult population of the country and the minimum sample size was set at 1,000 persons. The sample is representative of the adult population of the country in terms of the main sociological parameters (gender, age, education). In addition to providing an estimated margin of error for the sample, it was also requested that the survey be conducted in the form of a personal interview (PAPI or CAPI).
2. In addition to the national survey conducted by Szonda Ipsos, we also had the opportunity to get an idea of the opinion of the people of Szeged on local government by linking it to an annual survey of the population of Szeged. The population of Szeged was surveyed in the framework of the *Szeged Studies* research, which has been ongoing for decades, on a representative sample of 1,000 citizens aged 18 and over those permanently residing in Szeged, by gender, age, education and constituency. In the 2018 survey, the questionnaire was supplemented with questions on the relationship between local governments and the population. The extent to which the population considers public safety,

[1] The SZTE Sociology of Law Research Group was formed in the mid-2010s to carry out effective empirical research in various fields of study in cooperation with the SZTE Institute of Comparative Law and the SZTE Department of Sociology (Badó et al., 2016; Badó et al., 2017a; Badó et al., 2017b; Badó et al., 2018; Badó et al., 2019).

public transport, environmental care, roads and sewers, street lighting, health care, nursery and kindergarten care, primary and secondary education, job creation, waste collection, utilities, local public employment and social assistance in cash to be municipal tasks and priorities was examined.

3. In 2018, we also had the opportunity to conduct a nationwidesurvey – covering all law schools – in which we asked first and fourth year law students about some of the questions that were also included in the questions of the local government and the adult population of Szeged. Based on the law students' opinions, some "triple" comparisons were possible in our analysis of municipal employees.
4. In the spring of 2018, we conducted a survey among the employees of the Csongrád County Municipalities, supplemented by personal interviews. In addition to their satisfaction with their job, we asked them about the operational characteristics of the office, the way in which decisions are taken, how they see the situation and development of their municipality, and their opinion on the changing municipal–state relationship in recent years.

Thanks to quantitative and qualitative surveys, the research team has acquired a vast amount of data (more than 1,000 respondents in the national survey of the population, 111 respondents in the survey of municipal employees in Szeged, 1,034 respondents in the survey of the adult population in Szeged, and 1,150 respondents in the national survey of law students).[2]

1. Introduction

The focus of our research was on the social reflectivity of the operation of municipal governments, and in this context we examined the attitudes of the population towards the operation of municipal governments at all levels of the municipal hierarchy. This system of attitudes of the population forms an attitudinal structure which, in our understanding, includes the dimensions of orientation/awareness, satisfaction, trust and perception. In the present study, we unpack the latter dimension. We will show 1. how the population perceives the importance of local government in the development of local democracy; 2. how they perceive the quality of local public services; 3. how they perceive the division of responsibilities between the state and local government in this area looking specifically at the division of responsibilities in the operation of public education and training institutions; and 4. whether the political embeddedness of the

[2] During the research the following literature was used: Dollery et al., 2006; Aaberge & Langorgen, 2006; Agranoff, 2014; Bjørnå & Jenssen, 2006; Bordogna & Neri, 2014; Brackertz, 2013; Bulmer, 2015; Callanan, 2011; Chan, 2019; Chen et al., 2010; Cuadrado-Ballesteros et al., 2013; Dawkins, 2021; Devereux & Weisbrod, 2006; Falleth & Hovik, 2009; Gawłowski & Pawel, 2019; Giannoccaro et al., 2008; Hardell et al., 2020; James, 2011; Kadirbeyoğlu & Sümer, 2012; Kákai, 2019; Keivani et al., 2001; Kudo, 2015; Milán-García et al., 2021; Mina & Surugiu, 2013; Murphy et al., 2011; Narbón-Perpiná & De Witte, 2018; Nurse, 2015; Powell et al., 2019; Reddick et al., 2022; Reid, 2012; Sellers & Lidström, 2007; Suditu et al., 2014; Tamás, 2014; Tarditi, 2020; Vincent-Jones, 2002; Watt, 2006; Wilson, 2003.

leader influences the access of the municipality to resources. In our data analysis, we have systematically examined whether there are marked regional or municipal differences in public attitudes towards local government.

2. Public services and attitudes

In the underlying research, attitudes towards housing were conceptualised as a multi-dimensional concept, with a) dimensions of orientation/awareness; b) dimensions of satisfaction; c) dimensions of participation; and d) dimensions of evaluation. Here we present the measurement results related to the latter component.

The public's evaluative attitude towards local governance and local public services is not only a specific research interest, but also a reference point for the organisation, either as a legitimacy factor (critical vs. supportive, dissatisfaction vs. satisfaction, lack of trust vs. trust). The legitimacy issue is more important in theoretical or political terms, while the pragmatic aspect is primarily – as the term itself implies – a factor influencing practice.

As members of the 'public' (residents), people come into contact with the central or local government system in four main roles: client, customer, consumer and citizen. In our research, the residents interviewed expressed their opinions in the latter two capacities.

Relevant international research has highlighted the importance of citizens' evaluation of public services. This is the starting point for the search for a balance between the needs of the population and the resources available (financial, organisational, human). Among the alternative solutions ("pathways"), research is mainly focused on the restructuring of the division of tasks between state and local governments, the development of inter-municipal and regional cooperation, the outsourcing (privatisation) of public services, the promotion of civic responsibility and civil society participation, and the inclusion of citizens' initiatives. Thus, the alternative to a two-tier model (central and local government) for the provision of local public services is to become a multi-tier model, or to become a multi-level model.

The motives behind these changes are generally twofold: on the one hand, of course, to meet the needs of the population (which is the primary legitimacy factor), and on the other, clearly to reduce the burden on traditional actors. In the last few decades, we have witnessed the 'take-back' of the welfare state and welfare systems, which has been exacerbated by cyclical austerity. This then has a direct impact on the different concepts, policies and practices of public services, which in many cases also vary according to political election cycles. The development of public services takes place in a social field of power between the axes of economic vs. social rationality and is the result of a social struggle between the actors involved.

However, trends are of course not independent of nation state contexts, whether historical – such as the centralisation of societies or civil society traditions – or political structures that are currently at work. In case of Hungary, this is reflected in strong centralisation efforts and the weakness of civil society. The tendency of governmental efforts to weaken the autonomy of local governments was also noticeable in the period of our empirical research.

It was therefore of interest to us to find out how the population values local public services and how they perceive the role of the state and local government in providing them.[3]

3. Local government and democracy

Self-governance is a fundamental democratic ideal, either as a requirement to be created/implemented or as a real social historical phenomenon. The Hungarian term ("self-government") is not accurate, and may even be misleading. The English term local government is much more accurate. "Self-government" exists at the level of the individual or family at most, but not at the institutional or municipal level. Perhaps some of the ancient Greek polis (Athens),[4] or the early American (New England) society described by Tocqueville (2000) as a "township" were such, where power was built from the bottom up, and which Tocqueville described as "coming to life by the hand of God". Europe, with its hierarchical, centralising models and practices, did not exhibit this pattern either before or after the 19th century.[5] In Europe, it is not by God, nor by the people, but by the state that it comes into being. It is the state that regulates the scope of municipal government, not the municipal "people" decide which tasks they are willing to entrust to the municipal administration, the county or the state. There is no direct democracy (nor is it possible), there is necessarily a system of representation, i.e. there is no 'self-government'. As Robert Michels wrote at the beginning of the 20th century, the people do not rule, they do not govern, at most only in-abstracto.[6] The possibility of local government in Europe is an achievement, a "gift" forced upon us by central power, and in this sense a truly democratic phenomenon.

It is important to reiterate that we are talking here about the morphogenesis of self-government, that it is created within the framework of an existing state (unlike in early America), and of course it is another question whether this is primarily the result of pressure from citizens' movements or of some aspect of the state leadership. The point is that it happens under the 'stewardship' of the state. There are, of course, examples (such as the

[3] This was one of the issues raised in a 2005 survey in England, where only three out of eleven public services (police, public education and health) were considered by a majority of residents to be more of a public function (police: 56%, public education: 63%, health: 84%).

[4] Aristotle's observations on city-state democracy are correct but distant. On the one hand, he states that the concept of citizen includes *ab ovo* the possibility of participation in common affairs (*Politics,* 1269a–b), but on the other hand, he is sometimes sceptical about the participation and rights of citizens (the people) (*Politics,* 1282a–b).

[5] Of course, there is no question of Europe being united in terms of state involvement. This (the "London–Moscow relation") is illustrated by Alexander Gerschenkron in his work, who shows that as one moves from London towards Moscow, there is a tendency for autonomy to decline and, at the same time, for state involvement to increase (Gerschenkron, 1984).

[6] "As organisation progresses, democracy begins to decline." "The emergence of professionalism in democracy marks the end of democracy." "Any system of leadership is incompatible with the most important postulates of democracy" (Michels, 2001, 240, 241). At page 244, Michels (2001) quotes the utopian socialist Victor Considerant, that socialism does not mean the rule of those at the bottom of the hierarchy, but the organisation of society by a group of citizens. The anarchists knew this in advance, and then, for example, Trotsky in Soviet social practice, or Milovamion Gyilas Đilas in Yugoslav social practice saw that there was no question of 'self-management' or 'self-government' by the people (Haque, 2012, 6).

Yugoslav experiment in self-management) where it can be seen as an overarching principle of social organisation, but 'stewardship' is still present.

At the same time, we argue that there is a very close link between self-governance and direct democracy, since self-governance functions as the primary framework (terrain) for direct democracy. But of course there is no automatic coincidence. And it is not only the constraining effect of state 'tutelage' that is at stake here, but also, for example, the formalisation of democracy by enabling charismatic 'people's leaders' to bring local communities under their control, all the while retaining the institutional trappings of direct democracy.[7]

It is important to clarify whether this is also the perception of the population, especially in a socio-historical context in which there is neither a strong civil society nor a strong public will to create one.

It is assumed that some kind of summative (integral) attitude will be established as a result of the public's assessment of the areas in which local authorities operate. However, in order to 'presuppose' this, we first of all asked about the relationship between local government and democracy. It seems reassuring that the Hungarian population still tends to see municipal self-government as an opportunity to strengthen local democracy. The responses received do not show a normal distribution, but a "rightward-sloping" one. Although there are many (44.2 %) who are ambivalent on this issue, the proportion of "optimists" is more than double that of "sceptics" (16.7%) (39.1%).

Table 1.
"Local authorities have an important role to play in the development of local democracy." How far do you agree with this statement?

	Valid percentage
Not at all (1)	5.7
Rather not (2)	11.0
Disagree (1–2)	**16.7**
Both (3)	44.2
More like yes (4)	25.4
Absolutely (5)	13.7
Agree (4–5)	**39.1**
Mean (1–5)	**3.3**

Source: OLA 2018

[7] These are not new things in social or political history. Both Aristotle in the fourth book of his *Politics* and Plato in the eight book of his *Republic* provide numerous examples of this phenomenon. However, even in a formal sense, there is no democracy, for example in cases of 'self-government', where a temporary power, granting autonomy, entrusts the administration of territorial units to political appointees (Haque, 2012).

There are two ways to look for background factors that influence public attitudes on this issue. We can look at the evolution of the mean (3.3 on a five-point scale at national level) across different groups of the population, but we can also look for significant differences in the percentage of the three opinion groups ("sceptical", "ambivalent" and "optimistic").

As regards the differences in the average values, we should first of all draw attention to the significant regional differences. Such significant differences are particularly marked in the counties, where the values outside the (3.30) ± 10% zone of the average are worthy of attention. Four counties are in the high agreement ("optimistic") zone and seven in the low agreement ("sceptical") zone. In the case of the former, we can speak of an almost coherent 'northern zone', while the picture is very mixed for scepticism, with a high degree of spatial dispersion.

Table 2.
"Local authorities have an important role to play in the development of local democracy." How much do you agree with this statement – by county

County	**Mean (1–5)**	**N**
Fejér	3.95	35
Nógrád	3.93	28
Heves	3.93	34
Komárom-Esztergom	3.69	35
Bács-Kiskun	3.56	50
Somogy	3.53	23
Pest	3.51	110
Budapest	3.50	169
Csongrád	3.42	39
Szabolcs-Szatmár-Bereg	3.40	47
All	**3.30**	**937**
Veszprém	3.12	35
Hajdú-Bihar	3.07	55
Baranya	3.02	43
Borsod-Abaúj-Zemplén	2.96	50
Békés	2.89	38
Tolna	2.81	20
Jász-Nagykun-Szolnok	2.75	37
Zala	2.68	46
Vas	2.57	25
Győr-Moson-Sopron	2.31	17
	Range: 1.64	

Source: OLA 2018; SLA 2018

The most surprising is that instead of the expected homogeneity, there is a characteristic differentiation also at a *regional level.*

Table 3.
*"Local authorities have an important role to play in the development of local democracy." How much do you agree with this statement – by region**

Region	**Mean (1–5)**	**N**
Central Transdanubia	3.59	104
Central Hungary	3.51	280
North Hungary	3.50	112
Southern Great Plain	3.32	127
All	**3.30**	**937**
Southern Transdanubia	3.11	86
Northern Great Plain	3.10	139
Western Transdanubia	2.57	88
	Range: 1.02	

Note: Significance level: 0.00; Eta = 0.286
Source: OLA 2018

With regard to the *categories of municipalities,* a "U" distribution emerges, which again (the "inverse U" distribution) means that those living in the largest municipalities are closest on the attitude scale to those living in the commune, and are uniformly separated from the urban zone between them.

Table 4.
*"Local authorities play an important role in the development of local democracy." How well do you understand/agree with this statement (%) – by type of settlement**

Settlement type	**Mean (1–5)**	**N**
Budapest/Capital	3.50	169
Municipality	3.42	262
Country	3.30	937
City/Town	3.25	332
County seat	3.05	174
Szeged city	3.49	1012
	Range: 0.45	

Note: Significance level: 0.00; Eta = 0.152
Source: OLA 2018; SLA 2018

The regional effects can also be illustrated by the very large differences in *the percentage distribution* (structure) of *opinion groups.* For reasons of case numbers, we have now excluded counties, looking only for significant differences in the percentage of opinion groups between regions and municipal levels.

Significant differences between regions are also apparent in this comparison. More than striking is the 'eccentric' opinion structure of the West Transdanubian region (Győr-Moson-Sopron, Vas and Zala counties), with a radically high level of scepticism (16.7%), almost 30% (46.1%) above the average, and a correspondingly radically low level of optimism (11.2%), almost 30% below the average (39.1%).

Table 5.
Percentage of agreement (attitude) groups – by region

Region	Agree	Ambivalence	Disagree
North Hungary	13.4	33.0	53.6
Central Hungary	10.0	43.9	46.1
Central Transdanubia	5.7	50.5	43.8
Southern Great Plain	18.1	41.7	40.2
ALL	**16.7**	**44.1**	**39.1**
Northern Great Plain	23.0	41.7	35.3
Southern Transdanubia	14.0	60.5	25.6
Western Transdanubia	46.1	42.7	11.2

Note: The lowest values are in grey and the highest values in blue.
Source: OLA 2018

The "U" distribution in terms of *settlement categories* is reflected not only in the mean values (strength of attitudes), but also in the opinion structure (percentage distribution of grouped attitudes), which (like the "inverted U" distribution) means that the opinion structure of those living in the largest settlements is closest to that of those living in the commune, and they are uniformly separated from the urban zone between them.

Table 6.
Percentage of agreement (attitude) groups – by type of settlement

Municipal level	Disagree	Ambivalence	Agree
Country	16.6	44.3	39.1
Budapest	11.8	41.2	47.1
County seat cities	25.9	41.4	32.8
Other cities	17.8	47.1	35.0
Communities	12.2	44.7	43.1
Szeged	11.8	39.1	49.1

Source: OLA 2018; SLA 2018

We were unable to detect the role of personal background factors in this issue in our national database. Only with regard to educational attainment was there an interesting finding: *graduates* are more optimistic (3.50) about the other three levels of education (at least 8 years of primary school, vocational school, vocational training, vocational

secondary school, high school), while they show a very similar score (between 3.25 and 3.27). Otherwise gender, age, social status and participatory activity were not associated with attitudes towards "local governance and local democracy".

It would be tempting to conclude that individualistic factors – not co-determinants – are the main determinants of the position on this issue, but this seems to be contradicted by the regional differences that reflect the significant differentiation.

3.1. How has the quality of local public services developed in recent years?

Here again, we wanted to know how residents perceive the nationalisation process of recent years. This was not done by asking directly, but indirectly. We asked how they perceived the quality of local public services (schools, medical care, transport, energy supply) in recent years.

Overall, a *slightly critical* assessment emerged from the responses. Most respondents (nearly 60%) perceive no change, but the normal curve on this question is rather "left leaning", i.e. those who perceive a deterioration are slightly more numerous than those who think there has been an improvement in the quality of local public services (schools, medical care, transport, energy supply).

Table 7.
How has the quality of local public services developed in recent years (%)?

Noticeable deterioration	23.6
Has not changed	58.5
Noticeable improvement	17.8

Source: OLA 2018

Since we measured opinions using a symmetric scale, it was possible to examine two levels of measurement. We can follow the percentage of perceptions that deteriorate or improve, but we can also use a higher (numerical) level of measurement.

Looking at the latter level, significant differences between counties were observed. While the counties of Tolna, Bács-Kiskun and Győr-Moson-Sopron are significantly above the average in the "perception of improvement", the counties of Komárom-Esztergom, Borsod-Abaúj-Zemplén and Csongrád are significantly above the average in the "perception of deterioration".

Table 8.
How the quality of local public services has developed in recent years?

County	**Mean**	**N**
Tolna	0.48	22
Bács-Kiskun	0.38	51
Győr-Moson-Sopron	0.31	17

County	Mean	N
Fejér	0.22	35
Vas	0.11	25
Somogy	0.07	22
Baranya	0.05	40
Jász-Nagykun-Szolnok	0.03	37
Zala	0.03	37
Nógrád	0.02	28
Békés	0.02	35
Budapest	–0.04	165
ALL	**–0.06**	**924**
Pest	–0.15	110
Heves	–0.19	34
Szabolcs-Szatmár-Bereg	–0.20	47
Veszprém	–0.26	34
Hajdú-Bihar	–0.28	56
Komárom-Esztergom	–0.30	36
Borsod-Abaúj-Zemplén	–0.34	52
Csongrád	–0.37	40
	Range: 0.85	

Source: OLA 2018

In regional terms, only the deterioration rate in Northern Hungary differs significantly from the average. In terms of the percentage distribution, this means that the proportion of those who perceive an improvement is the lowest (only 6.1%), two-thirds (67.0%) of those who perceive no change, and the deterioration rate is only slightly above average (27.0%).

Table 9.
How the quality of local public services has developed in recent years?

Region	Mean	N
Southern Transdanubia	0.17	84
Western Transdanubia	0.11	80
Southern Great Plain	0.04	126
ALL	**–0.06**	**924**
Central Hungary	–0.08	275
Central Transdanubia	–0.12	104
Northern Great Plain	–0.17	140
North Hungary	–0.21	115

Source: OLA 2018

There is little variation *at the level of* the *municipality* (only that the municipal residents are the most critical, but this only means that their "decay rate" is slightly higher than the average). The same can be said for the social background variables (the decay rate of *graduates and those who* show some kind of *participatory activity* is slightly above the average).

Table 10.
How the quality of local public services has developed in recent years?

Type of settlement	**Mean**	**N**
County seat	0.02	176
Budapest	–0.04	165
All	**–0.06**	**924**
City	–0.06	326
Municipality	–0.12	256
Szeged	–0.18	1006

Source: OLA 2018; SLA 2018

Filtering the deterioration and improvement rates (percentages) by the background variables, we find hardly any outliers. The average *deterioration rate of* 23.9% is significantly higher for graduates (27.8%), those who only vote (29.2%) and those who are active (30.5%), as well as in the North Great Plain (29.3%), North Hungary (27.0%) and Central Transdanubia (27.9%) regions. Those aged 50–59 (25.0%), living in the South Transdanubian (30.6%) and South Great Plain (29.9%) regions recorded a significantly higher average *improvement rate than the* 17.8% recorded.

In case of Szeged, the proportion of those perceiving deterioration is significantly higher than the national one (36%), but in some population groups the lowest (maximum primary school) and the highest (college, university) educational attainment (41.1 and 39.0% respectively) and participation activity (41.2%) are around 40%.

4. Perception of the role of the state in local public services

After the indirect question, we asked a direct question. We asked people to assess the growing role of the state: do they think it is good that the state is increasingly taking over more of the responsibility for providing local public services (schools, medical care, transport, energy) from local authorities.

On the whole, the structure of opinion is very balanced, differing from the normal distribution only in that it is slightly to the left, with slightly - but not significantly - more people in favour than against. It can be said that there is neither strong majority support nor strong majority opposition to the state taking over an increasing share of the provision of local public services from local authorities. Of course, we could also say that people are strongly divided in their assessment of this process.

Table 11.
How good is the growing role of the state in public services (%)?

Not good at all	16.4
Rather not good	17.4
Both	39.1
Rather good	22.4
Very good	4.6
Mean (1–5) = 2.81	

Source: OLA 2018

Table 12.
How good is the growing role of the state in public services (%) – aggregated response categories

Rather not good	33.8
Both	39.1
Rather good	29.0

Not good at all (1)	16.4
Rather not good (2)	17.4
Not good (1–2)	33.8
Both (3)	39.1
Rather good (4)	22.4
Very good (5)	4.6
Good (4–5)	27.0
Mean (1–5) = 2.81	

Source: OLA 2018

Since this is not a "regulatory" issue but a more abstract one, we assumed that certain social background variables would influence the breakpoints. Measuring at the interval level allows us to examine the relationships in both numerical (averaging over a five-point scale) and categorical (percentages) terms.

The national average, measured on a five-point scale, is 2.81, somewhat below the *critical* range. More critical (lower) values are mainly found at the regional level, especially in the *counties.* Groups in the zone more than 10% below the average value are considered to have a significant deviation, such as Győr-Moson-Sopron (2.40), Vas (2.08), Heves (1.96) and Nógrád (1.55) counties. The highest proportions of those who approve of the process are in the capital (3.14), Zala (3.22) and Tolna (3.34). The value of the range on a five-point scale (1.79) is significant, but a meaningful explanation would require the expertise of a regional expert.

Table 13.
How good (1–5) is the growing role of the state in public services – by county

County	**Mean**	**N**
Tolna	3.34	21
Zala	3.22	48
Budapest	3.14	167
Somogy	3.08	22
Fejér	3.04	36
Baranya	2.95	43
Békés	2.91	34
Pest	2.89	111
Csongrád	2.85	41
ALL	2.81	937
Borsod-Abaúj-Zemplén	2.78	51
Bács-Kiskun	2.78	52
Szabolcs-Szatmár-Bereg	2.78	47
Hajdú-Bihar	2.70	56
Jász-Nagykun-Szolnok	2.66	37
Komárom-Esztergom	2.63	36
Veszprém	2.59	33
Győr-Moson-Sopron	2.40	17
Iron	2.08	24
Heves	1.96	33
Nógrád	1.55	28
	Range: 1.79	

Source: OLA 2018

At the regional level, the averages are naturally not so dispersed (the range is only 0.84), but it is more than striking how the North Hungary region differs significantly from the other six regions at this aggregate level: it is here that the increase in the role of the state in local public services is viewed most critically.

Table 14.
How good (1–5) is the growing role of the state in public services – by region

Region	**Mean**	**N**
Southern Transdanubia	3.07	86
Central Hungary	3.04	278
Southern Great Plain	2.84	127
ALL	2.81	937
Western Transdanubia	2.76	89
Central Transdanubia	2.76	104
Northern Great Plain	2.72	140
North Hungary	2.23	112
	Range: 0.84	

Source: OLA 2018

There is even less variation in the averages by *municipality,* but it is interesting to note that only the *inhabitants of the capital* (probably mainly because of the issue of public transport) have a positive (3.14) view of the state's involvement, while in all other categories of municipalities the overall view is rather negative. In this respect, Szeged has proved to be the most critical, and this is where we see the fact that the population has favoured a socialist municipal government for several cycles.

Table 15.
How good (1–5) is the growing role of the state in public services – by type of settlement

Municipal level	**Mean**	**N**
Budapest	3.14	167
City	2.82	325
ALL	**2.81**	**937**
Municipality	2.69	267
County seat	2.68	178
Range: 0.46		
Szeged	2.59	1018

Source: OLA 2018; SLA 2018

Since we assumed that answers to this question would be based on values and political-ideological affiliations, we expected that some social background factor (such as education or social status) would have an effect. To put it mildly, this was not the case. There was hardly any difference (the range was not at the 0.3 level for any background factor) and since we found that only the effect of territorial factors was detectable

among the aspects included in the questionnaire, we think it likely that the explanatory power of this question is greater for the value system and political-ideological characteristics of the respondents, but such questions were not included in our questionnaire.

5. The expected division of responsibilities between the state and the municipality in matters of municipal management[8]

First of all, we have to note that people (also) consider all public services related to their municipal life to be, to a greater or lesser extent, but without exception, a municipal responsibility. Fourteen such services we asked for their views on this matter. We wanted to know to what extent they consider the provision of these services to be a municipal responsibility (no, partly, fully).

National figures show that of the fourteen service areas, there is not one that the majority of people do not consider to be even partly a municipal responsibility. Thus, people believe that shaping the living conditions in their municipalities is primarily a self-governing task. From this point of view, of course, they do not expect paternalism from local authorities to the same extent for all services: most of all in the field of public employment and least of all in the field of utilities, but even the latter is still considered by the majority to be (partly or wholly) a local government responsibility.

Table 16.

Is it the responsibility of the local government to provide services to the public (%)?

	1 This is not a municipal task	2 This is partly a municipal responsibility	3 This is a self-governing task	2 + 3 This is partly or entirely a municipal responsibility
Utility services	25.1	32.8	42.1	74.9
Creation of jobs	16.1	42.7	41.2	83.9
Public transport	15.2	34.3	50.5	84.8
Health care	14.9	37.8	47.3	85.1
Road network	11.8	42.6	45.6	88.2
Sewer network	11.2	34.9	53.9	88.8
Refuse collection, waste farming	11.0	27.8	61.2	89.0
Providing street lighting	11.0	29.5	59.5	89.0
Primary and secondary schools, Education	10.6	40.9	48.5	89.4
Public safety	9.8	40.8	49.4	90.2

[8] The so-called ESOMAR "A" category.

	1 This is not a municipal task	2 This is partly a municipal responsibility	3 This is a self-governing task	2 + 3 This is partly or entirely a municipal responsibility
Day nursery, kindergarten	7.4	34.1	58.4	92.6
Social assistance in cash	6.6	30.6	62.8	93.4
Environmental care, public services	5.7	26.8	67.5	94.3
Local public employment	4.3	24.9	70.8	95.7

Note: Grey numbers indicate the highest proportion of respondents who chose the given response category.
Source: OLA 2018

Based on the responses, a scale of 0 to 1 was created,[9] where a higher value indicates that it is considered more of a municipal responsibility and a lower value indicates that it is considered less of a municipal responsibility. No service scored less than 0.5 on average, with all services scoring between 0.59 and 0.83.

Table 17.
Is it the responsibility of the municipality to provide services to the public?

	All (index values)
Local public employment	0.83
Environmental care, public cleanliness	0.81
Social assistance in cash	0.78
Day nursery, kindergarten	0.76
Garbage collection, waste management	0.75
Providing street lighting	0.74
Sewer network	0.71
Public safety	0.70
Primary and secondary schools, education	0.69
Public transport	0.68
Road network	0.67
Health care	0.66
Creation of jobs	0.63
Utility services	0.59

Source: OLA 2018

[9] 0 = "this is not a local government task"; 0.5 = "this is partly a local government task"; 1 = "this is a local government task".

We then used analysis of variance to examine the factors affecting the scale value. At the numerical level of measurement, rather interesting spatial patterns emerged, both at the level of municipalities, regions and counties. The most important feature of the pattern at the municipal level is the striking separation of the *inhabitants of Budapest* (green) from the other three categories (county, city, municipality), who show the lowest values for all services, i.e. those who think most in terms of a state/self-government division of tasks. Another important feature of the pattern is that the highest values (red) are given "alternately" (alternating between services) by the inhabitants of two categories *(county seats, municipalities),* i.e. they are the ones who most often identify local government as the "task holder". In all cases, the values of those in the *city* category are "below" these two categories. *Szeged* does not systematically deviate (in any direction) from the triad of county–capital–city–village. In five cases it is at a level higher than the maximum value and in four cases it is below the minimum value of the triad (and in four cases it is somewhere in between).

Table 18.
Whether the local government is responsible for providing services to the public – index values by type of settlement

	Budapest	County seat	City	Municipality	Min.–max. difference	Szeged
Local public employment	0.70	0.84	0.84	0.90	0.20	0.87
Caring for the environment, public services	0.68	0.83	0.83	0.85	0.17	0.89
Social security cash benefits vision	0.69	0.77	0.79	0.83	0.14	0.72
Nursery, kindergarten and pre-school vision	0.64	0.74	0.78	0.81	0.17	0.78
Garbage collection, corpse-forestry	0.60	0.79	0.78	0.79	0.19	0.83
The provision of street lighting visit	0.56	0.82	0.78	0.77	0.26	0.85
Sewer network	0.57	0.78	0.75	0.72	0.21	0.78
Public safety	0.60	0.74	0.73	0.70	0.14	0.72
Primary and secondary schools education and training	0.56	0.67	0.73	0.73	0.17	0.65
Public transport	0.44	0.85	0.76	0.61	0.41	0.88
Road network	0.54	0.74	0.68	0.69	0.20	0.71
Health care	0.53	0.64	0.67	0.75	0,11	0.57
Creation of jobs	0.50	0.64	0.64	0.67	0.17	0.6
Utility services	0.43	0.72	0.59	0.59	0.29	0.63

Note: Green number = minimum value; red number = maximum value.
Source: OLA 2018; SLA 2018

In the regional cross-section, we can highlight two regions with tendencies: Northern Hungary shows the highest values (in red), i.e. it is "municipality-centric" in all services, while at the other pole, the region of *Central Hungary* shows the lowest values (in green) in 9 out of 14 cases and minimum values in 5 cases (as the capital is located in this region, this is not surprising).

Table 19.
Whether the local government is responsible for providing services to the public – index values by region

	Central Hungary	Central Transdanubia	Western Transdanubia	Southern Transdanubia	Northern Hungary	Northern Great Plain	Southern Great Plain	Min.–max.
Local public employment	0.74	0.85	0.81	0.88	0.97	0.84	0.86	0.23
Environmental care, public services	0.73	0.80	0.84	0.75	0.95	0.79	0.89	0.22
Social cash care	0.72	0.77	0.70	0.87	0.91	0.76	0.82	0.22
Nursery, kindergarten care	0.69	0.81	0.70	0.73	0.83	0.76	0.85	0.16
Garbage collection, corpse-forestry	0.68	0.68	0.75	0.75	0.90	0.77	0.81	0.22
Street lighting	0.66	0.76	0.80	0.64	0.86	0.75	0.81	0.20
Sewer network	0.65	0.71	0.75	0.60	0.82	0.75	0.77	0.17
Public safety	0.66	0.71	0.78	0.69	0.82	0.65	0.68	0.17
Primary and secondary schools education and training	0.61	0.76	0.66	0.65	0.79	0.69	0.76	0.18
Public transport	0.56	0.72	0.72	0.72	0.84	0.68	0.67	0.28
Road network	0.61	0.70	0.69	0.57	0.80	0.66	0.70	0.23
Health care	0.59	0.66	0.62	0.70	0.78	0.65	0.74	0.15
Creation of jobs	0.55	0.66	0.65	0.60	0.73	0.63	0.67	0.18
Public utility services comments	0.49	0.64	0.68	0.50	0.76	0.61	0.54	0.27

Source: OLA 2018

Table 20.

Whether the local government is responsible for providing services to the public – index values by county

	Baranya	Bács	Békés	Borsod	Csongrád	Fejér	Győr	Hajdú	Heves	Komárom	Nógrád	Pest	Somogy	Szabolcs	Szolnok	Tolna	Vas	Veszprém	Zala	All	Min.–max.
Public safety	0.64	0.65	0.70	0.69	0.68	0.77	0.73	0.69	0.87	0.61	1.00	0.75	0.73	0.65	0.58	0.74	0.70	0.73	0.83	0.70	0.42
Public transport	0.63	0.60	0.59	0.68	0.83	0.70	0.66	0.72	0.99	0.63	0.99	0.77	0.81	0.63	0.69	0.80	0.81	0.83	0.69	0.68	0.55
Environmental care, public cleanliness	0.73	0.82	0.98	0.93	0.89	0.96	0.72	0.79	0.96	0.77	1.00	0.82	0.80	0.87	0.68	0.74	0.83	0.67	0.88	0.81	0.33
Road network	0.56	0.73	0.67	0.68	0.68	0.75	0.63	0.70	0.90	0.64	0.94	0.72	0.64	0.70	0.56	0.53	0.90	0.70	0.62	0.67	0.41
Sewer network	0.58	0.76	0.78	0.69	0.77	0.78	0.51	0.85	0.87	0.68	0.99	0.79	0.70	0.73	0.64	0.55	0.87	0.68	0.76	0.71	0.44
Street lighting	0.63	0.76	0.83	0.82	0.86	0.89	0.67	0.87	0.83	0.76	1.00	0.84	0.85	0.67	0.67	0.44	0.85	0.61	0.82	0.74	0.56
Health care	0.72	0.68	0.91	0.61	0.67	0.80	0.72	0.80	0.91	0.55	0.94	0.68	0.78	0.60	0.48	0.57	0.50	0.62	0.64	0.66	0.46
Nursery, kinder-garten care	0.75	0.78	0.95	0.72	0.84	0.85	0.70	0.83	0.88	0.71	0.99	0.77	0.74	0.80	0.59	0.70	0.57	0.87	0.76	0.76	0.42
Running primary and secondary schools, education	0.63	0.75	0.83	0.63	0.72	0.77	0.66	0.73	0.87	0.63	0.99	0.70	0.68	0.71	0.61	0.65	0.58	0.86	0.69	0.69	0.43
Existence of jobs	0.73	0.69	0.63	0.54	0.67	0.69	0.67	0.64	0.86	0.54	0.96	0.62	0.56	0.68	0.54	0.37	0.57	0.74	0.68	0.63	0.59
Waste transport, waste management	0.72	0.81	0.77	0.88	0.85	0.72	0.71	0.83	0.86	0.60	1.00	0.80	0.79	0.81	0.62	0.76	0.86	0.71	0.72	0.75	0.40
Utility services	0.58	0.54	0.50	0.55	0.59	0.63	0.67	0.70	0.92	0.56	0.96	0.60	0.45	0.58	0.51	0.39	0.77	0.73	0.65	0.59	0.57
Local public employment	0.86	0.75	0.97	0.97	0.91	0.91	0.71	0.87	0.95	0.79	0.99	0.81	0.78	0.92	0.68	1.00	0.84	0.84	0.82	0.83	0.32
Social assistance in cash	0.86	0.74	0.84	0.89	0.89	0.86	0.62	0.74	0.87	0.64	0.99	0.77	0.76	0.86	0.66	0.99	0.64	0.81	0.76	0.78	0.37

Source: OLA 2018

In the table below, the county (counties) with the maximum value are marked in red and the counties with values close to the maximum are marked in pink. Dark green indicates those representing the minimum value and light green those close to it. The counties between the two pole fields remain in white.

The most striking phenomenon of inter-county disparities is represented by the county of *Nógrád,* which stands out ("outgrows") its extreme local government centrality. There are some counties (Heves, Békés) which, in addition to their intermediate values, produce only a few values close to the maximum. Alongside them, there are several "green" counties (above all *Jász-Nagykun-Szolnok* and *Komárom-Esztergom,* then *Győr-Moson-Sopron, Baranya*), whose inhabitants prefer a more state/self-government division of tasks. *Pest* without Budapest is the only region in the intermediate zone for all services (without minimum and maximum intermediate values).

Otherwise, the largest differences between counties were in the areas of job creation (0.59), utilities (0.57), street lighting (0.56) and public transport (0.55).

The division of responsibilities between local government and the state in the field of municipal management is an area of concern where the responses of the population are not only explained by spatial variables (municipal level, region, county), but also by social background variables (education, social status).

As far as education is concerned, two specific features of this relationship should be highlighted. The first is that the four education categories tend to *move together* (giving close values) for the 14 services. The other is that, on virtually all issues, the *lowest educational attainment levels are the* most likely to take a self-government-centred position (the exception is street lighting, where the lowest value is shown).

Table 21.
Whether the local government is responsible for providing services to the public – index values by educational level

	Max. 8 general	Apprentice-ship- training	Secondary school, vocational school	College, university
Public safety	0.78	0.65	0.67	0.69
Public transport	0.76	0.64	0.65	0.64
Environmental care, public cleanliness	0.85	0.81	0.78	0.79
Road network	0.75	0.65	0.65	0.60
Sewer network	0.77	0.68	0.71	0.68
Street lighting	0.72	0.74	0.76	0.75
Health care	0.70	0.67	0.63	0.63
Day nursery, kindergarten	0.79	0.80	0.72	0.70
Running primary and secondary schools, Education	0.76	0.74	0.62	0.63
Creation of jobs	0.74	0.58	0.57	0.60

	Max. 8 general	Apprentice-ship- training	Secondary school, vocational school	College, university
Garbage collection, waste management	0.79	0.75	0.73	0.73
Utility services	0.70	0.53	0.55	0.55
Local public employment	0.87	0.85	0.79	0.82
Social assistance in cash	0.82	0.77	0.75	0.78

Source: OLA 2018

In case of social status, the pattern is similar to that of educational attainment: Basically, the co-movement of different statuses in the evaluation is also observed here, but it is also clear that the lowest status (ESOMAR category "E") is the most likely to express municipal centrality (again, the exception is street lighting, but not the highest "A" status, but those in the middle "B" and "C" categories are most likely to hold this view), with higher status people thinking more in terms of task sharing.

Table 22.
Whether the local government is responsible for providing services to the public – index values by social status

	"A"	"B"	"C"	"D"	"E"
Public safety	0.65	0.66	0.68	0.66	0.74
Public transport	0.59	0.66	0.67	0.61	0.71
Environmental care, public cleanliness	0.70	0.78	0.80	0.81	0.84
Road network	0.59	0.61	0.65	0.64	0.71
Sewer network	0.61	0.70	0.74	0.63	0.74
Street lighting	0.70	0.76	0.76	0.69	0.74
Health care	0.63	0.59	0.64	0.62	0.71
Day nursery, kindergarten	0.68	0.66	0.74	0.72	0.81
Running primary and secondary schools, education	0.66	0.57	0.65	0.67	0.76
Creation of jobs	0.57	0.58	0.59	0.61	0.67
Garbage collection, waste management	0.75	0.70	0.75	0.75	0.77
Utility services	0.53	0.51	0.57	0.57	0.63
Local public employment	0.79	0.77	0.81	0.85	0.87
Social assistance in cash	0.68	0.78	0.77	0.78	0.80

Source: OLA 2018

5.1. State versus local government, who should own public education institutions?

This question is intended to ask about the relationship between the competences of the state and the local government, and which solution seems to be more favourable to the

inhabitants of the municipalities. Of course, it is not just a question of asking people to formulate their views in general terms, but also of asking them to give their opinions on specific issues (tasks). First of all, on issues where there has been a recent 'restructuring' and the State has taken over (taken away) powers previously vested in local authorities. One such area was the running of public education establishments (Szüdi, s. a.; Forray & Kozma, 2013, p. 33).

We asked people whether they think that the maintenance and operation of public education institutions (kindergartens, primary schools, secondary schools) should be the responsibility of the state, local authorities or churches and foundations. This question is not, in the opinion of the inhabitants of the municipalities, a point of reference for either those in favour or those against the changes imposed. A very similar proportion of respondents think that the maintenance and operation of public education establishments should be the responsibility of the state or local authorities, and only a few (one or two per cent) think that churches and foundations should have a maintenance and operation role in this area.

The equilibrium ratios observed at the national level do not vary significantly from *one municipality to another. Residents of Budapest* and *municipalities are* in full agreement, with a slightly higher proportion (48.4%) than average (58.4%) of *residents of county capitals* preferring the state, while a slightly higher proportion (49.8%) than average (55.3%) of *residents of other cities preferring the* municipalities as "owners".

We found that here too, there are mainly regional differences, and less dependent on the personal parameters of the respondents. When looking at the question at a regional cross-sectional level, two regions stand out with a significantly higher proportion of respondents than the 81% average perceiving the role of politics as influential. One of the two regions is South Transdanubia (93.3%) and the other is Northern Hungary (95.7%). The social researcher is immediately struck by the fact that, on the one hand, a large proportion of the population in these regions live in small rural settlements and, on the other, the Roma population is over-represented in comparison with the overall proportion of the population in these settlements.

Table 23.

Does the fact that the mayor of a municipality belongs to the governing party affect the development of the municipality – by region

Region	**Valid percentage**
North Hungary	95.7
Southern Transdanubia	93.3
Western Transdanubia	81.1
ALL	81.0
Northern Great Plain	78.4
Central Hungary	77.8
Southern Great Plain	75.4
Central Transdanubia	73.1

Table 24.
Who should own the public education institutions (%)?

	State	Local government	Churches, foundations
Country	48.4	49.8	1.8
Budapest	48.1	48.1	3.7
County seat	58.4	41.6	0.0
City	41.9	55.3	2.7
Municipality	49.8	49.4	0.8
Szeged	48.6	49.3	2.1

Source: OLA 2018; SLA 2018

By conducting a regional comparison, we found that the region of *Western Transdanubia* is again the furthest away from the relative similarity of the six regions: here, compared to the average (48%), a much higher proportion (71.1%) favours the state as the maintainer and operator of public education institutions. *In contrario,* this also means the lowest level of support for the role of local government (only 28.9% instead of 49.8%).

Do background variables create significant differences, i.e. do they disrupt the average equilibrium state? Neither gender, nor age, nor education, nor social status, nor participation activity have a differentiating effect.

On the whole, it seems that people at national level also see this issue as a pragmatic rather than a value-based, political-ideological issue.

5.2. The role of the mayor's government party in the development of the municipality (Tamás, 2014)

Let us treat as a sociological fact that the differential relation to redistributive power naturally affects the differential access to resources, regardless of the normative order of resource allocation and access to resources.[10] Since this relationship is not only a matter of knowledge leaking out of informal channels and forming a more or less coherent picture in the public's interest (see Almond, 1950), but is also present in the mediatised public sphere, it is a particularly fascinating task to understand the public images that are associated with it.

[10] Recent national election campaigns have made it clear that local residents should take this into account when casting their votes. Partisanship in government is of particular importance in systems where the executive is highly personalised. A pro-government politician in a large rural town recently told the local media that the town had 'received' its new resources from the prime minister personally, and that the town council owed him a debt of gratitude.

Our question was: in your opinion, *does the fact that the mayor of a municipality belongs to the governing party affect the development of the municipality?* The picture is quite clear: four out of every five respondents think that the political affiliation of the mayor has an influence. In other words, municipal leadership is not just about coordinating local affairs, not just about dealing with policy issues, but also about managing the political context. The "mayor's office" can thus be seen as a local political institution whose functioning is also a function of the 'big political' power structure.

Table 25.
Does the fact that the mayor of a municipality belongs to the governing party influence its development?

	Valid percentage
Yes, it affects	80.9
Not affected	19.1

Source: OLA 2018

The really fascinating question is whether there are substantive differences in the public's perception of political influence. We found that here too there are mainly regional differences, less dependent on the personal parameters of the respondents.

Table 26.
Does the fact that the mayor of a municipality belongs to the governing party affect the development of the municipality?

Region	**Valid percentage**
North Hungary	95.7
Southern Transdanubia	93.3
Western Transdanubia	81.1
ALL	81.0
Northern Great Plain	78.4
Central Hungary	77.8
Southern Great Plain	75.4
Central Transdanubia	73.1

Source: OLA 2018

We also have county-level data, so we can see how the responses of people living in the counties of these two regions have evolved. But here again we run into the methodological limitations of using percentages because of the small number of cases per county. This should be borne in mind when considering the following county data, which exceed 90%.

Table 27.
Does the fact that a municipality's mayor belongs to the governing party influence the development of a municipality – according to some high percentage counties

Region	Percentage	Number of cases in relation to the number of elements in the subsample
North Hungary		
Heves	100.0	34–34
Borsod-Abaúj-Zemplén	94.4	51–54
Nógrád	92.6	25–27
Southern Transdanubia		
Somogy	100.0	23–23
Tolna	91.3	21–23
Baranya	90.9	40–44
Other counties with high value		
Szabolcs-Szatmár-Bereg	95.7	44–46
Csongrád	90.2	37–41

Source: OLA 2018

However, it cannot be said that this high value – indicative of political influence – is a characteristic of small municipalities, since in the distribution of municipalities, although they have the highest value, they hardly differ from the value of county seats.

Table 28.
Does the fact that the mayor of a municipality belongs to the governing party affect the development of the municipality – by type of settlement

Municipal level	Valid percentage
Country	80.9
Budapest	74.6
County seat	83.7
City	79.2
Municipality	85.2
Szeged	88.1

Source: OLA 2018

When examining the perception of political influence by individual background characteristics, we found that only two groups of the population are close to 90%: those with the *highest social status* (88.1%) and those with "only voting" participation activity (88.4%). There is no function effect anywhere and, interestingly, even educational attainment shows no correlation with these perceptions.

6. Summary

In order to map the attitude of the population towards the municipalities, we have tried to take a "deliberative" approach. This means that before asking the respondents for an evaluation, we wanted to clarify their "competence background". On the one hand, we wanted to know where they obtained their information (media, network, personal experience) and, on the other hand, what kind of participatory activity they were engaged in, i.e. whether they had already used any of the institutional forms that allow them to learn about local government (above all elections, the parliamentary reception, public hearings, citizens' forums, council meetings). We felt that these two important background variables could help to explain the public's awareness of local government (knowledge of the law, the scope of its tasks, the way it operates, the actors involved), their satisfaction and confidence and their perceptions of recent changes. The two schematic diagrams below illustrate how the survey was structured in this way.

The question is whether we have produced data that can only be interpreted in themselves – and then we have in fact only fulfilled the requirements of the genre that social research scepticism calls "factology", "national book-keeping", etc. – or whether our data point in a certain direction, raising the level of abstraction of the research results. We feel that, in many respects, we have succeeded in gaining insights that can be interpreted in a theoretical framework, that show definite social contexts and that require further explanation.

Interpretation of the measurement results includes the characteristics of the respondent population relevant to our topic. Our research has found that a) the Hungarian population has a relatively high level of awareness of the functioning of local government; in contrast, b) their level of participation is markedly low; and c) they have a moderately positive level of satisfaction and trust in local government. There is also a contextual factor, namely d) a shift in the relationship between the state and local government towards a weakening of local autonomy. These are therefore the underlying characteristics of the attitudes of the population we are examining in this study.

A specific pattern emerged as a result of these evaluative attitudes. Overall, it can be concluded that attitudes towards the functioning of local government are mainly influenced by territorial-local (region, county, type of municipality) factors, with only a very modest influence from the personal (socio-demographic, socio-cultural) characteristics of the respondents. This contradicts our expectations that age or education, for example, may play a more significant role in the perception of the functioning of local power. Instead of social fault lines, territorial fault lines differentiate population attitudes. To illustrate this, the role of local government in the development of local democracy was rated highest by graduates and lowest by the less educated, but the gap between them was only a quarter of that between regions and only a sixth of that between counties.

Since we are measuring attitudes, it is an exciting "discovery" that the role of personal characteristics in the formation of attitudes is subordinated to the "structural" (contextual) factor, i.e. the object of the attitude. Local realities dominate the perception of reality, not the perceptual positions of the perceivers. This would seem to call into question the explanatory power of the "social subjective reality" viewpoint.

First of all, we must note that the Hungarian population's level of awareness of local government is relatively high. Their primary sources of knowledge are the media (local newspapers, radio, TV and the Internet) and their personal network of contacts (their circle of acquaintances). A significant proportion (80–90%) are aware of the way in which the most important local government actors (mayor, councillor, notary) take office; they know who the legislator is in the case of the law (almost 80%) or the municipal decree (almost two-thirds); they know the mayor (over 80%) and even the political side supporting him (two-thirds). However, there is a difference in awareness; the "low point" is that very few people (just under 50%) know their local councillor.

The level of public participation is particularly low. Not even half of the population took part in the last municipal elections, and only a fraction (a few percent) took advantage of one of the institutional opportunities to learn about the tasks and functioning of the municipality (reception hours for representatives, public hearings, citizens' forums, council meetings).

There is no legitimacy deficit: even on the eve of the next elections, local governments have the support of the majority of the population, expressed in a moderately positive level of satisfaction with their work and confidence in them.

References

Aaberge, R. & Langorgen, A. (2006). Measuring the Benefits from Public Services: The Effects of Local Government Spending on the Distribution of Income in Norway. Review of Income and Wealth, 52(1), 61–83. Online: https://doi.org/10.1111/j.1475-4991.2006.00176.x

Agranoff, R. (2014). Local Governments in Multilevel Systems: Emergent Public Administration Challenges. American Review of Public Administration, 44(4_suppl), 47–62. Online: https://doi.org/10.1177/0275074013497629

Almond, G. (1950). The American People and Foreign Policy. Harcourt, Brace and Co.

Aristotle (1932). Politics. Translated by H. Rackham. Loeb Classical Library 264. Harvard University Press. Online: https://doi.org/10.4159/DLCL.aristotle-politics.1932

Badó, A., Feleky, G. & Lőrinczi, J. (2016). Reprezentativitás a magyar ülnökrendszerben. Egy empirikus vizsgálat alapkérdése I. MTA Law Working Papers, 3(16), 1–18. Online: https://bit.ly/3VSLRFK

Badó, A., Feleky, G., Lőrinczi, J. & Patyi, Zs. (2017a). Összehasonlító motivációs vizsgálat a szegedi joghallgatók körében. MTA Law Working Papers, 4(11), 1–41. Online: https://bit.ly/3FNSIdX

Badó, A., Feleky, G. & Lőrinczi, J. (2017b). Laikus és professzionális bírák viszonya a kevert bíróságban – Egy empirikus vizsgálat eredményei a magyar ülönkrendszerről. Állam- és Jogtudomány, 58(1), 3–28.

Badó, A., Lőrinczi, J. & Patyi, Zs. (2018). A joghallgatók helyi önkormányzatokkal kapcsolatos jogtudat vizsgálatának táblázatos eredményei. Comparative Law Working Papers, 2(3), 1–40. Online: https://bit.ly/3VR2Zf0

Badó, A., Feleky, G. & Lőrinczi, J. (2019). Empirical Research in Hungary about Lay and Professional Judge Relations in Mixed Tribunals: Fair or Self-Distancing Aristocratism. HSOA Journal of Forensic, Legal & Investigative Sciences, 5(28), 1–12. Online: http://doi.org/10.24966/FLIS-733X/100028

Bjørnå, H. & Jenssen, S. (2006). Prefectoral Systems and Central–Local Government Relations in Scandinavia. Scandinavian Political Studies, 29(4), 308–332. Online: https://doi.org/10.1111/j.1467-9477.2006.00154.x

Bordogna, L. & Neri, S. (2014). Austerity Policies, Social Dialogue and Public Services in Italian Local Government. European Review of Labour and Research, 20(3), 357–371. Online: https://doi.org/10.1177/1024258914535548

Brackertz, N. (2013). Political Actor or Policy Instrument? Governance Challenges in Australian Local Government. Commonwealth Journal of Local Governance, 12, 3–19. Online: https://doi.org/10.5130/cjlg.v12i0.3261

Bulmer, E. (2015). Local Democracy. International IDEA.

Callanan, M. (2011). Review of International Local Government Efficiency Reforms. Local Government Research Series, Report no. 1. Institute of Public Administration (IPA). Online: https://bit.ly/3PlFNTz

Chan, J. L. (2019). New Development: China Renews Reform of Central–Local Fiscal Relations and Provides for Basic National Public Services. Public Money & Management, 39(1), 64–69. Online: https://doi.org/10.1080/09540962.2019.1537707

Chen, Z., Li, D. & Wang, J. (2010). Citizens' Attitudes Toward Local Government Public Services. Public Performance & Management Review, 34(2), 221–235. Online: http://doi.org/10.2753/PMR1530-9576340204

Cuadrado-Ballesteros, B., Garcia-Sanchez, I. M. & Prado-Lorenzo, J. M. (2013). Effect of Modes of Public Services Delivery on the Efficiency of Local Governments: A Two-stage Approach. Utilities Policy, 26(C), 23–35. Online: http://doi.org/10.1016/j.jup.2013.04.005

Dawkins, R. (2021). Private Contracting and Citizen Attitudes Toward Local Government. Urban Affairs Review, 57(5), 1286–1311. Online: https://doi.org/10.1177/1078087420918660

Devereux, P. J. & Weisbrod, B. A. (2006). Does "Satisfaction" with Local Public Services Affect Complaints (Voice) and Geographic Mobility (Exit)? Public Finance Review, 34(2), 123–147. Online: https://doi.org/10.1177/1091142105282963

Dollery, B., Crase, L. & Byrnes, J. (2006). Local Government Failure: Why Does Australian Local Government Experience Permanent Financial Austerity? Australian Journal of Political Science, 41(3), 339–353. Online: https://doi.org/10.1080/10361140600848952

Falleth, E. & Hovik, S. (2009). Local Government and Nature Conservation in Norway: Decentralisation as a Strategy in Environmental Policy. Local Environment, 14(3), 221–231. Online: https://doi.org/10.1080/13549830802692849

Forray, R. K. & Kozma, T. (2013). Menekülés az iskolától. Educatio, 22(1), 23–34.

Gawłowski, R. & Paweł, M. (2019). Innovation in Public Service Delivery in Terms of Shared Services Centres in Local Governments: A Case Study of the City of Toruń (Poland). Zarządzanie Publiczne, 50(4), 39–53. Online: https://doi.org/10.15678/ZP.2019.50.4.04

Giannoccaro, R., Costantino, N., Ludovico, A. & Pietroforte, R. (2008). Measuring Citizen Satisfaction with Aspects of Public Services from a Local Authority and Determining Their Importance: A Case Study. Public Organization Review, 8(1), 1–15. Online: http://doi.org/10.1007/s11115-007-0044-1

Gerschenkron, A. (1984). A gazdasági elmaradottság történelmi távlatból. Translated by Halmos K., Hegedűs J. & Kertesi G. Gondolat.

Haque, A. (2012). Theoretical Perspective of Local Government – Literature Review. Research Institute of Behavioural Psychology. Online: https://mpra.ub.uni-muenchen.de/45868/

Hardell, S., Johansson Sevä, I. & Öun, I. (2020). Welfare Service Privatization and Opinions about Service Quality: The Role of Political Ideology Among Local Politicians and the Public. Social Policy & Administration, 54(1), 45–59. Online: https://doi.org/10.1111/spol.12509

James, O. (2011). Managing Citizens' Expectations of Public Service Performance: Evidence from Observation and Experimentation in Local Government. Public Administration, 89(4), 1419–1435. Online: https://doi.org/10.1111/j.1467-9299.2011.01962.x

Kadirbeyoğlu, Z. & Sümer, B. (2012). The Neoliberal Transformation of Local Government in Turkey and the Contracting Out of Municipal Services: Implications for Public Accountability. Mediterranean Politics, 17(3), 340–357. Online: https://doi.org/10.1080/13629395.2012.725301

Kákai, L. (2013). Önkormányzat és lakosság viszonya, avagy bizalom vagy bizalmatlanság. In Csefkó Ferenc (Ed.), Közigazgatás és az emberek (pp. 153–170). A Jövő Közigazgatásáért Alapítvány.

Kákai, L. (2019). Útkereső önkormányzatok. Nemzeti Közszolgálati Egyetem.

Keivani, R., Parsa, A. & McGreal, S. (2001). Globalisation, Institutional Structures and Real Estate Markets in Central European Cities. Urban Studies, 38(13), 2457–2476. Online: https://doi.org/10.1080/00420980120094614

Kudo, H. (2015). Bridging the Gap between Reform Practices and Literatures: New Public Service Delivery of Japanese Local Governments. International Public Management Review, 16(1), 147–164.

Michels, R. (2001). Political Parties. Kitchener, Batoche Books.

Milán-García, J., Rueda-López, N. & De Pablo-Valenciano, J. (2021). Local Government Efficiency: Reviewing Determinants and Setting New Trends. International Transactions in Operational Research, 29(5), 2871–2898. Online: https://doi.org/10.1111/itor.13032

Mina, S. & Surugiu, I. (2013). Different Ways of Analysing the Effects of Public-Private Partnership in Organizing Public Services. Constanta Maritime University Annals, 14(20), 247–250.

Murphy, P., Greenhalgh, K. & Jones, M. (2011). Comprehensive Performance Assessment and Public Services Improvement in England? A Case Study of the Benefits Administration Service in Local Government. Local Government Studies, 37(6), 579–599. Online: https://doi.org/10.1080/03003930.2011.623160

Narbón-Perpiná, I. & De Witte, K. (2018). Local Governments' Efficiency: A Systematic Literature Review. International Transactions in Operational Research, 25(2), 431–468. Online: https://doi.org/10.1111/itor.12364

Nurse, A. (2015). Bridging the Gap? The Role of Regional Governance in Delivering Effective Local Public Services: Evidence from England. Planning Practice & Research, 30(1), 69–82. Online: https://doi.org/10.1080/02697459.2015.1008802

Powell, M., Gillett, A. & Doherty, B. (2019). Sustainability in Social Enterprise: Hybrid Organizing in Public Services. Public Management Review, 21(2), 159–186. Online: https://doi.org/10.1080/14719037.2018.1438504

Plato (1997). Republic. Translated by G. M. A. Grube, rev. C. D. C. Reeve. In J. M. Cooper (Ed.), Plato. Complete Works (pp. 971–1223). Hackett Publishing Co.

Reddick, C. G., Perlman, B. J. & Demir, T. (2022). Citizen Satisfaction with Public Service Delivery: A Test of Alternative Theories. Canadian Public Administration, 65(2), 352–371. Online: https://doi.org/10.1111/capa.12464

Reid, M. (2012). Managing Central-Local Government Relationships: The Case of New Zealand. Commonwealth Journal of Local Governance, (11), 3–32. Online: https://doi.org/10.5130/cjlg.v0i0.3055

Sellers, J. M. & Lidström, A. (2007). Decentralization, Local Government, and the Welfare State. Governance, 20(4), 609–632. Online: https://doi.org/10.1111/j.1468-0491.2007.00374.x

Suditu, B., Nae, M., Negut, S. & Gheorghilaş, A. (2014). Responsibilities and Limits of Local Government Actions against Users of Public Services of Planning and Sustainable Territorial Development in Romania. Amfiteatru Economic Journal, 16(35), 154–170. Online: www.econstor.eu/handle/10419/168819

Szüdi, J. (s. a.). Az önkormányzati vagyon állami használatba vétele. drszudi.hu. Online: https://bit.ly/3BsCAf5

Tamás, V. (2014). Politikai élet a helyi önkormányzatokban. MTA TK PTI. Online: https://bit.ly/3Wd6hbY

Tarditi, V. (2020). Policy Framing and Party Competition: The Italian Political Debate on Local Public Services since the Economic Crisis. Partecipazione e Conflitto, 13(1), 633–664. Online: https://doi.org/10.1285/i20356609v13i1p633

Tocqueville, A. (2000). Democracy in America. Translated by G. Lawrence. Harper Perennial Modern Classics. Online: https://doi.org/10.7208/chicago/9780226924564.001.0001

Vincent-Jones, P. (2002). Values and Purpose in Government: Central-local Relations in Regulatory Perspective. Journal of Law and Society, 29(1), 27–29. Online: https://doi.org/10.1111/1467-6478.00210

Watt, P. A. (2006). Principles and Theories of Local Government. Blackwell. Online: https://doi.org/10.1111/j.1468-0270.2006.00605.x

Wilson, D. (2003). Unravelling Control Freakery: Redefining Central-Local Government Relations. British Journal of Politics and International Relations, 5(3), 317–346. Online: https://doi.org/10.1111/1467-856X.0010

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 91–108.

DOI: 10.53116/pgaflr.2022.2.4

Why Mexicans (Dis)Obey the Law

Social Norms, Legal Punishment and Pluralistic Ignorance

Rebeca Pérez León*

* Assistant Professor, Instituto Tecnológico de Estudios Superiores de Monterrey Campus Querétaro, Mexico, Department of Humanities, e-mail: drrpleon@gmail.com

Abstract: This paper presents the results of an experimental research project on the causes of Mexicans' law-abiding and non-abiding behaviour. Firstly, it explains the theories tested, namely, deterrence and normative theory of law-abidance, and defines the concepts measured. Regarding deterrence theory, the causal efficacy of knowledge of legal punishment was measured and of normative theory that of social and personal norms. Second, it describes how these concepts were operationalised and how the two-stage experimental survey was conducted. Finally, the paper outlines the main results. The statistical analyses show that neither social norms explain unlawful behaviour nor knowledge of legal punishment influence law-abiding behaviour among Mexicans in specific situations. However, the analysis did show a statistically significant disagreement between Mexicans' behaviour and normative beliefs, which reveals a case of pluralistic ignorance whereby Mexicans behave illegally and believe others approve of illegal behaviour, but they personally disapprove of it. These results, however, would have to be confirmed in a study with a representative sample to be conclusive.

Keywords: deterrence theory, normative theory, legal sanctions, social norms, Mexicans' law-abiding behaviour

1. Introduction

There is vast evidence of the high disregard for the law in Mexico. From 2012 to 2018 Mexico plummeted 33 places in the Corruption Perception Index (CPI) resulting from numerous widely publicised cases of corruption among civil servants and politicians at all levels of government but especially at the federal level. As is well known, Mexico hosts some of the most powerful drug trafficking organisations in the world recruiting men and women of all social strata, and bribing police and military officials of all ranks. But unlawful behaviour is not exclusive to law enforcement and government officials and criminal organisations. Disregard for the law is also common among citizens illustrated by an extremely successful informal economy that overlooks labour rights and tax obligations, and by the fact that "pettier crimes such as theft on the street or

pickpocketing on public transportation are some of the most reported occurrences in Mexico, followed by extortion and fraud cases" (Statista Research Department, 2022). Yet disregard for the law is not a single, simple or unitary phenomenon. It has a myriad of manifestations, and each manifestation is brought about by multiple causes. Historical and sociological studies find the causes of Mexicans' unlawful behaviour in Mexico's political history and in the population's precarious socio-economic conditions (Almond & Verba, 1989; Adler de Lomnitz, 1993; González Casanova, 1981; Fix Fierro et al., 2017). Legal studies highlight rather the gaps in the law (Camacho & García, 2020). And there are countless surveys that measure, categorise and disaggregate criminal activity in Mexico (ENCUP 2001, 2003, 2005, 2008, 2012; Amparo Casar, 2015). There is growing attention, however, to the causal efficacy of individuals' normative and empirical expectations of others on legal behaviour (Girola, 2011; Morris, 2011; Sarsfield, 2012; Ajzenman, 2021), and the extent to which considerations about punishment play a role in individuals' legal compliance. The investigation, whose key outcomes I hereby present, contributes to the gathering of evidence of the causal efficacy – or lack thereof – of these latter factors using an experimental methodological approach.

The investigation was conducted in 2021 with participants from Mexico City, and tests deterrence and normative theories of law-abidance using survey experiments. The project was guided by two interrelated questions, namely, 'does knowledge of the legal punishments associated with particular legal breaches incline Mexicans to obey the law?' and 'do social norms of unlawful behaviour influence Mexicans' unlawful behaviour?'. The former question looks at a possible cause of Mexicans' law-abiding behaviour and draws its explanatory variable from deterrence theories, and the aim of the second question is to test whether the key variables of normative theories can explain unlawful behaviour. Generally speaking, deterrence theories maintain that individuals' law-abiding and non-abiding behaviour result from considerations of the legal punishment associated with breaking the law. According to this theory, the more widely known, severe, swift and certain legal punishments are, the more effective the law will be in deterring individuals from breaking the law. Normative theories, on the other hand, state that social and personal norms of respect for the law condition individuals to follow the law. These two theories do not necessarily exclude one another as their respective variables could play a role in individuals' inclination to follow or not follow the law.

The statistical analyses of the data did not provide evidence to support that considerations of legal punishment condition Mexicans' legal behaviour nor did it provide evidence to show the existence of social norms of legal disobedience. However, they do show a statistically significant disagreement between Mexicans' behaviour and normative beliefs that reveals a case of pluralistic ignorance whereby Mexicans behave illegally and believe others approve of illegal behaviour, but they personally disapprove of it. It would be necessary, however, to conduct the experimental design in a larger study with a representative sample in order to draw conclusive results.

The paper is divided into five sections. The first section briefly describes the main tenets of deterrence and normative theories. The second section identifies the key concepts to be measured, explains how these concepts were operationalised and how the experimental survey was designed and conducted. The third and fourth sections summarise the

main results and offer some interpretations of the results. The fifth and last section concludes the article.

2. Deterrence theory and normative theory of law-abidance

Deterrence theory is a crime prevention theory originally stemming from criminology. It presupposes a utilitarian concept of human beings and their rationality according to which "individuals make decisions based on what will garner them pleasure [or] pain" (Beccaria, 1986, cited in Tomlinson, 2016, p. 33). From this perspective, the rationality of human behaviour is determined by whether a particular conduct is experienced positively or negatively, or brings about consequences which are pleasurable or not. Pleasure and pain are not understood only in a physical or corporeal sense. Rather, these sentiments involve also symbolic and immaterial valuables such as praise or condemnation, sense of belonging or rejection, etc. Deterrence theory maintains that the most effective mechanism to prevent individuals from engaging in certain behaviours is to threaten them with the possibility of experiencing painful or unpleasant experiences as a penalty for engaging in those behaviours. In other words, deterrence theory advances the view that the best way to encourage individuals to avoid engaging in certain behaviours is to criminalise said behaviours.

For the threat to be effective though, individuals have to regard the penalty associated as a painful experience or as severe enough for them to want to avoid it. Moreover, individuals must know what penalty will follow in each case, believe that it will follow as a consequence for engaging in those behaviours, and that it will follow without undue delay. Deterrence theory is thus "grounded in individuals' perceptions" (Tomlinson, 2016, p. 33) about the "certainty, celerity [...] severity" (Tomlinson, 2016, p. 34) and knowledge of penalties. Thus, authorities have to ensure that individuals have the relevant perceptions and knowledge, and for that they need effective communication mechanisms and socialisation agencies that reach the target population. The process of creating the relevant perceptions and knowledge is not straightforward, for numerous factors "such as age, gender, impulsivity, mental illness, antisocial personality disorder, etc." (Ellis et al., 2009, cited in Tomlinson, 2016, p. 34) would have to be factored in for the authorities' message to produce the desired results. Once the message about the penalties associated with engaging in certain behaviours is relayed to the target group, it is expected that individuals will make rational choices based on the information received, which, according to the concept of rationality of deterrence theory, should mean avoiding engaging in criminalised behaviours.

Now, in contrast to deterrence theories that view laws as the "chief means of regulating social relations [...] through the threat of punishment" (Barrett & Gaus, 2020, p. 204), normative theories of law-abidance discard the idea of law as something that opposes and supplants common norms and as the sole effective tool of behavioural change in a political community. Instead, normative theories regard laws and law-abiding behaviour as dependent on the social norms prevalent in the society under consideration and on individuals' personal convictions (cf. Barrett & Gaus, 2020, p. 208–209). Thus, law-abiding behaviour is more prevalent when laws are compatible with common social norms

and the personal convictions of the members of a society. It is this compatibility that is likely to create social norms of legal obedience. At the opposite end of the spectrum, laws that are incompatible with common social norms are likely to be resisted thereby creating a social behavioural pattern of unlawful behaviour (cf. Stuntz, 2000; Kahan, 2000).

According to Barret and Gaus, "in cases where there is no social norm of legal obedience – either because there exists no norm relating to legal obedience or because a norm of legal disobedience is present – laws tend not to be followed, even in the presence of moral convictions that they ought to be" (Barrett & Gaus, 2020, p. 212). Social norms either of legal obedience or legal disobedience tend to trump personal convictions. If, for instance, an individual holds the belief that laws ought to be followed but witnesses people around him/her continuously and systematically breaking or overlooking the law, this individual is likely to behave in accordance with the collective behaviour he/she witnesses rather than with his/her personal moral convictions. This points toward a crucial element about the view of normative theories of individuals' behaviour and their rationality, namely, "the main variable affecting behaviour is not what one personally likes or thinks one should do, but rather one's belief about what 'society' approves of" (Bicchieri, 2017, p. 10). Normative theories, thus, see individuals' behaviour as fundamentally social.

Not every pattern of collective behaviour is a social norm though, as Cristina Bicchieri's typology of patterns of collective behaviour makes clear. Most people tend to use coats in winter, but their behaviour is not a social norm because wearing coats does not "depen[d] on the expectation that others conform" (Bicchieri, 2006, p. 22) or on "the belief that they expect me to conform" (Bicchieri, 2006, p. 22). A social norm exists when the preference of behaviour is caused by our belief that others engage in that behaviour and our belief that others expect us to engage in that behaviour: "A social norm exists when a sufficient number of individuals have the 'normative expectation' that others believe one ought to follow the law, and the 'empirical expectation' that others do in fact follow the law" (Barrett & Gaus, 2020, p. 212), and when these expectations are causing the choice of behaviour.

Social norms, thus, are maintained because individuals believe others follow the norm and because individuals believe the majority expect others to follow the norm, and they act upon these beliefs. These beliefs, however, might be mistaken, which gives rise to a phenomenon termed 'pluralistic ignorance'. Pluralistic ignorance happens when individuals hold the aforementioned beliefs while ignoring that "it is not true that all members [...] believe one ought to follow N [the norm]. In fact, the majority of individuals dislike N and do not think one ought to follow it" (Bicchieri, 2017, p. 42). Since they believe the majority hold this mistaken belief too, they deliberately avoid openly revealing their true normative beliefs for fear of being at the receiving end of punishments of various sorts or because they seek to obtain the social benefits of behaving as others think one should behave such as "obtain[ing] approval or avoid[ing] disapproval" (Barrett & Gaus, 2020, p. 212) or some other symbolic or non-symbolic utility. Moreover, individuals might see others' "expectations as legitimate [...] as grounding an obligation to comply" (Barrett & Gaus, 2020, p. 213). These reasons are powerful enough for people to comply with what they believe others believe and do, but, in some cases, this compliance contributes to the maintenance of socially damaging social norms.

3. Operationalisation of concepts and experimental survey design

The first research question, 'does knowledge of legal sanctions associated with particular legal breaches incline Mexicans to obey the law?', looks at the causal efficiency of one of the explanatory concepts of deterrence theory on legal behaviour, that is, knowledge of legal sanctions. Additionally, the correlation – although not the causality – of certainty of legal punishment and choice of behaviour was tested. Celerity and severity of legal sanctions were left out. Celerity was left out because it is in a sense subsumed under individuals' perception of the certainty of punishment, and because it requires more familiarity with legal processes than the average person is likely to have. Severity was not included because it presupposes knowledge of legal sanctions, a presupposition not necessarily warranted. The concept of knowledge of legal sanctions does not need to be operationalised. Sanctions were communicated to participants in simple and plain language in order to ensure that they were aware of them. Certainty of punishment was operationalised in terms of perceptions of the probability of receiving a legal sanction for specific legal offences. It was measured by asking participants about their perception of the likelihood of being punished if caught committing specific criminalised behaviours, where they had to choose between four options: highly likely, likely, not very likely, unlikely.

The second research question, 'do social norms of unlawful behaviour influence Mexicans' unlawful behaviour?', looks at the influence of social norms on unlawful behaviour. This concept also needs operationalisation, but Cristina Bicchieri's concept of social norms has the advantage of being easy to operationalise. Bicchieri defines social norms as patterns of collective behaviour where the preference for behaviour depends on empirical and normative social expectations. Social expectations generally are beliefs or future predictions about others. Empirical social expectations in particular are beliefs about how others will behave in the future, and normative social expectations are beliefs about what others approve of, and will continue to approve of in the future. Personal norms in turn are beliefs about what individuals personally approve of regardless of whether others agree or disagree with them (cf. Bicchieri, 2017, pp. 11ff, 18ff). In the first instance, measuring social norms requires gathering information about empirical and normative social expectations among participants. For there to be social norms though, there need not only be a majority consensus of the relevant expectations about others. Rather, preference for a particular behaviour must be caused by this consensus, that is, compliance must come as a result of the relevant social expectations. Thus, behaviour has to be measured when the relevant expectations are and are not present and see whether there are significant differences in behaviour.

Following Cristina Bicchieri's standard measurement of social norms (cf. Bicchieri, 2017, p. 50ff; Bicchieri et al., 2014) I designed a two-staged experimental survey, the first of which aimed at finding out consensus (or lack thereof) of empirical and normative social expectations, and the second stage was intended to determine whether these expectations were causing unlawful behaviour. Since the research also aims at determining whether considerations about punishment influence Mexicans' legal behaviour, the survey

of the first stage included a question about the perception of the likelihood of being punished if caught committing a legal offence, and the second stage also put to the test the causal efficacy of knowledge of legal sanctions on law-abiding behaviour. Causality implies not only that one phenomenon occurs after another, but rather it implies that, all things remaining equal, if the first phenomenon had not occurred, the second would not have occurred either. One way of measuring causality in survey experiments, as Bicchieri suggests, is to manipulate variables (Bicchieri, 2017, p. 27), for example, by giving information to some participants and not to others and evaluating whether their behaviour or choices change. If it does not change, then the independent variable under consideration is not having any influence, but if it does, then this would show that the independent variable is influencing behaviour.

After revising the data of the National Institute of Statistics and Geography of Mexico for Mexico City, four common offences were selected: bribing police officers; putting up food stands in the street without legal permission; not registering small businesses with the tax office; and urinating in the street. For the first stage, I designed a questionnaire that presents participants with four common situations where a fictional character faces the dilemma of whether to follow the law or commit one of the aforementioned common offences. For each situation, participants are asked what they believe others in Mexico City would do, what they believe others in Mexico City believe should be done, and what they themselves believe should be done. The first and second questions gather information about participants' empirical and normative social expectations, respectively. Since there is a possibility that participants' do not reflect carefully about the answers to these questions, each of these two questions was followed by a question where participants are asked to guess what the majority of participants in the study selected in the previous question, and were offered a monetary incentive for each correct guess. Finally, the third question inquires about their personal norms. For all questions, participants had four options, two of which described lawful behaviours and the rest described unlawful behaviours. This first questionnaire also included a chart listing the four relevant legal offences where participants had to choose the likelihood of being punished in each case from four options: highly likely, likely, not very likely and unlikely. Additionally, in this first questionnaire participants also had to answer questions about their age, gender, education level, and where they live.

For the second stage I designed three questionnaires which again presented participants with the same four situations described in the questionnaire of stage one, and in each case participants were asked to choose the course of action the fictional character would take. Participants had to choose from four options, two of which described lawful behaviours and the other two described unlawful behaviours. The questionnaires though were not exactly the same. One questionnaire added information about the legal sanctions corresponding to the legal breaches after describing the situation. A second questionnaire added false information about empirical and normative social expectations of the majority of participants of a previous study – a deception of which participants were informed after the study. The third questionnaire did not have additional information and was used with the control group. The responses of the questionnaires were compared in order to find out whether there were significant differences between them.

It should be noted that in the questionnaires used in the second stage participants are asked what they think the fictional character will do instead of asking participants what they themselves would do. I decided to ask indirect rather than direct questions because of the possibility that participants might not answer truthfully, namely, because of social desirability bias. This kind of error happens when asking sensitive questions to participants, such as whether they follow the law. In these situations "participants may provide survey workers with what they feel is a socially desirable answer, rather than with the answer that reflects their true attitude" (Bicchieri, 2017, p. 56). Asking indirect questions can provide a sort of solution to this problem, for "most individuals are subject to what is known as a 'false consensus effect' in that, when not aware of dispositional or person-specific information, they infer that a decision maker would behave as [...] they themselves would when in a particular situation" (Bicchieri, 2014, p. 11). Surely, asking indirect questions also creates an error, but the responses to these questions can still "teach us something about how the respondent would react" (Bicchieri, 2014, p. 11).

A random sample of thirty one adult Mexicans living in Mexico City at the time of the study was selected for the study. Given that it was an exploratory research project, the sample was small and not representative of the Mexican population although it did portray the characteristics of the population in terms of gender (51.6% identified themselves as women and 48.4% did so as men), and the ranges of age were similar to the Mexican population (25.8% were from 18 to 27 years old, 19.4% were from 28 to 37, 29% were from 28 to 47, 9.7% were from 48 to 57, 6.5% from 58 to 67 and 9.7% were from 68 to 77 years old). All participants answered the questionnaire of the first stage, and for the second stage participants were randomly selected to answer one of the three questionnaires.

The research and all materials were evaluated by the Ethics of Research Board at the Central European University in Vienna, and approved in August 2021. All participants received and signed a consent form before starting the experimental survey, and were duly informed of the false information given in one of the three questionnaires used in the second stage and of the reasons for using false information.

4. Results

As said above, one of the aims of the first stage was to find out whether there was a consensus or agreement of empirical and normative social expectations. These are shown in Table 1 below. With only one exception, the majority of participants believe most Mexicans in Mexico City would behave unlawfully and believe that most Mexicans in Mexico City believe others should behave unlawfully. In these cases, there is a consensus of both empirical and normative social expectations suggesting a high probability of the existence of social norms of legal disobedience.

In the first situation, a fictional character is driving on a lane exclusive for public transport, a police officer sees him and waves him to pull over. The police officer informs the fictional character that he will give him a ticket and take his car to the police car deposit. The character entertains the possibility of bribing the police officer so he can walk

away. When asked what they believe most Mexicans in Mexico City would do, 90.3% of participants believe most people would bribe the police officer, and only 9.7% believe they would not bribe the police officer. This clearly shows a consensus of empirical social expectations of unlawful behaviour when it comes to situations where individuals are faced with the possibility of bribing a police officer. Regarding normative expectations, 58.1% believe most Mexicans in Mexico City believe others should bribe the police officer, and 41.9% believe Mexicans believe others should not bribe police officers. Again, this shows an agreement of normative expectations of unlawful behaviour.

In the second situation, a fictional character works as a clerk in a hotel but every month struggles to make ends meet, so he/she entertains the possibility of selling food outside his/her house and is wondering whether to apply for a legal permit at the local council for that purpose. In this situation, 83.9% of participants believe that the majority of Mexicans in Mexico City would not apply for a legal permit, and 16.1% believe they would apply for a legal permit, which shows a consensus of empirical social expectation of unlawful behaviour. As to normative expectations, 41.9% believe most Mexicans in Mexico City believe others should not apply for a legal permit and 58.1% believe people believe others should apply for legal permission. Strictly speaking these percentages do not show an agreement of normative social expectation of unlawful behaviour, because the majority did not hold this social expectation. Yet the percentage of those who believe Mexicans in Mexico City approve of unlawful behaviour in this situation is still rather high.

In the third situation, a character just started his own business fixing computers, but he has not registered it with the tax office. A client asks him for a payment invoice, which the character cannot as of yet provide. 87.1% of participants believe the majority of Mexicans in Mexico City would not register their business with the tax office, and only 12.9% believe they would register it. These percentages show a consensus of empirical expectations of unlawful behaviour. Regarding normative expectations, 58.1% believe the majority of Mexicans in Mexico City believe the character should not register his business with the tax office and 41.9% believe people believe the character should register it. Again, these results show a consensus of normative expectations of unlawful behaviour.

Finally, in the last situation a man is walking down the street after attending a party. He badly needs to go to the toilet and there are no public toilets nearby and he is disinclined to go back to the party. He entertains the possibility of urinating in the street. When asked what the majority of people in Mexico City would do, 90.3% believe they would urinate in the street, and 9.7% believe they would not urinate in the street. This shows an agreement of empirical expectation of unlawful behaviour. As to normative expectations, 61.3% believe the majority of Mexicans in Mexico City believe the character should urinate in the street, and 38.7% believe people in Mexico City believe the character should not urinate in the street. Again, this shows a consensus of normative expectations of unlawful behaviour.

Table 1.
Empirical and normative social expectations

	Bribing or not police officers		Applying for legal permit to put up a food stand in the street		Registering or not a business with the tax office		Urinating or not in the street	
	Empirical expect.	Normative expect.	Empirical expect.	Normative expect.	Empirical expect.	Normative expect.	Empirical expect.	Normative expect.
Unlawful behaviour	90.3%	58.1%	83.9%	41.9%	87.1%	58.1%	90.3%	61.3%
Lawful behaviour	9.7%	41.9%	16.1%	58.1%	12.9%	41.9%	9.7%	38.7%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Source: Compiled by the author.

With one exception, participants' responses to the questions of what they believe most Mexicans in Mexico City would do and believe others ought to do show a consensus of empirical and normative social expectations of unlawful behaviour. Thus, in the bribing situation, the business tax registration situation, and the urinating in the street situation, there is a high probability of there being social norms of unlawful behaviour, because social norms require a consensus of both empirical and normative expectations. In the food stand situation the majority does not hold a normative expectation of unlawful behaviour despite holding the empirical expectation of unlawful behaviour. Yet, the percentage of those who believe Mexicans in Mexico City approve of unlawful behaviour is high, so there is a possibility that there might be a social norm of unlawful behaviour in this situation, too.

The second stage aimed at determining the causes of lawful and unlawful behaviour in the relevant situations. In the questionnaire of stage one, I gathered participants' data about age, gender and level of education. I first ran statistical tests to see whether these variables influenced participants' responses, but the results of the tests do not support a dependence of behaviour on these variables. More concretely, I ran a point-biserial correlation to test whether age influences participants' choice for lawful or unlawful behaviour for each of the situations. The correlation for the data revealed a significant relation between age and the choice of behaviour in the bribing situation, $r = +0.479$, $n = 31$, $p < .01$, two tails; no significant relation between age and the choice of behaviour in the urinating in the street situation, $r = +0.193$, $n = 31$, $p > .05$, two tails; no significant relation between age and applying for a permit to put up a food stand situation, $r = +0.203$, $n = 31$, $p > .05$, two tails; and no significant relation between age and the choice of behaviour in the business registration with the tax office situation, $r = +0.267$, $n = 31$, $p > .05$, two tails. These results are shown in Table 2.

Table 2.
Results of the point-biserial correlation between age and choice of behaviour

	Bribing or not police officers		Applying or not for a legal permit to put up a food stand in the street	Registering businesses or not with the tax office	Urinating or not in the street
Age	0.479**		0.203	0.267	0.193

*$p < 0.01$, two tails
**$p < 0.05$, two tails
Source: Compiled by the author.

I also ran Fisher's Exact test to see whether gender and level of education influence the choice of behaviour. It was not possible to run the Chi-Square Test for Independence to evaluate the influence of gender and level of education on behaviour because the sample was too small and there were expected counts with less than five in all cases, which violates one of the assumptions of this test. In such cases, Fisher's Exact Test is used instead, which, similarly to the Chi-Square Test for Independence, tests the association or relationship between two nominal variables, but, unlike the Chi-Square Test for Independence, does not have the aforementioned assumption and can be used with very small samples. Below Tables 3 and 4 show the p values of Fisher's Exact Test for the relation between gender and choice of behaviour and level of education and choice of behaviour, respectively. In all cases, the p value is higher than 0.05 which suggests no association between the variables.

Table 3.
Fisher's Exact Test results for dependence of choice of behaviour on gender

	Bribing or not police officers	Applying or not for a legal permit to put up a food stand in the street	Registering businesses or not with the tax office	Urinating or not in the street
Fisher's Exact Test Exact Sig. (2-sided)	0.394	0.394	0.333	0.654

Source: Compiled by the author.

Table 4.
Fisher's Exact Test results for dependence of choice of behaviour on level of education

	Bribing or not police officers	Applying or not for a legal permit to put up a food stand in the street	Registering businesses or not with the tax office	Urinating or not in the street
Fisher's Exact Test Exact Sig. (2-sided)	0.889	0.172	0.879	1.00

Source: Compiled by the author.

After testing the influence of age, gender and level of education on choice of behaviour, I ran statistical analyses to test whether the main independent variables of this study, that is, knowledge of legal sanctions and empirical and normative expectations of unlawful behaviour influence lawful and unlawful behaviour, respectively. As described in the previous section, participants answered one of the three questionnaires. I gathered indirect information about what they would do in each situation and compared the results of the three questionnaires in order to see whether their choices differ significantly. In all cases I ran Fisher's exact tests, but the statistical analysis showed no statistically significant dependence of lawful behaviour on considerations about legal sanctions or dependence of unlawful behaviour on empirical and normative social expectations. The crosstab of percentages is shown in Table 5 and the p values of Fisher's exact tests are shown in Table 6 below.

Table 5.
Percentages of choice of behaviour by treatment group and situation

	Bribing or not police officers		**Applying or not for a legal permit to put up a food stand in the street**		**Registering businesses or not with the tax office**		**Urinating or not in the street**	
	Unlawful behav.	**Lawful behav.**	**Unlawful behav.**	**Lawful behav.**	**Unlawful behav.**	**Lawful behav.**	**Unlawful behav.**	**Lawful behav.**
Not knowing legal sanctions and no information about social expectations (control group or group A)	70%	30%	80%	20%	90%	10%	90%	10%
Manipulated empirical and normative expectations (second treatment group or group B)	100%	0%	80%	20%	90%	10%	90%	10%
Knowing legal sanctions (first treatment group or group C)	72.7%	27.3%	72.7%	27.3%	72.7%	27.3%	63.6%	36.4%

Source: Compiled by the author.

Table 6.
Results of Fishers' Exact Test of survey experiment

	Bribing or not police officers	Applying or not for a legal permit to put up a food stand in the street	Registering businesses or not with the tax office	Urinating or not in the street
Fisher-Freeman-Halton Exact Text Exact Sig. (2-sided)	.199	1.000	.578	.306

Source: Compiled by the author.

If we compare the percentages of participants who were informed that the majority of respondents in a previous study would take the lawful course of action and disapprove of unlawful behaviour with the percentages of participants who did not receive additional information in Table 5, the majority in both groups chose unlawful behaviours in all situations. This suggests that the additional information did not have any significant influence on their choice of behaviour and, thus, that there are no social norms of legal disobedience in the relevant situations. Even though most participants believe others break the law and approve of illegal behaviour in most situations, the statistical results of Fisher's Exact Test in Table 6 do not support the hypothesis that these beliefs cause unlawful behaviour among Mexicans in Mexico City. Admittedly, given the small sample of this study, these results can only indicate this possibility without being able to state a conclusive lack of causal relation.

Now, with respect to the independent variable of deterrence theory under consideration, in three out of four situations the percentages of people who chose an unlawful course of action and were informed of the legal sanctions corresponding to each offence are slightly lower than the percentages of the control group (participants who receive no additional information of any kind). This difference is not statistically significant as shown in Table 6, but it is worth noting, for in research with a larger sample these differences might turn out to be significant. As they are, in all cases and regardless of whether they knew of legal sanctions or not, the majority still chose the unlawful behaviour.

One possible reason as to why knowledge of legal sanctions does not nudge individuals towards behaving lawfully is that deterrence theory has been relentlessly tested and consistently found limited in its ability to significantly explain legal compliance and deter unlawful behaviour (cf. Barrett & Gaus, 2020, pp. 209–210; Tomlinson, 2016, pp. 33–38; Tyler, 2006, p. 22). Yet, I still decided to test the influence of knowledge of legal sanctions on legal behaviour because there are still too few empirical studies that put the theory to the test in the Mexican case even though numerous strategies to reduce criminal behaviour in Mexico generally and Mexico City in particular still rely on the explanations of deterrence theory. Although this study is not representative, it does corroborate the findings of larger studies that not only suggest the limited effectiveness of policies based on deterrence theory but also highlight the need to design different ones.

The results of the correlation between certainty of punishment and choice of behaviour provides further evidence of deterrence theory's limited ability to explain legal

compliance. It might be recalled that in the questionnaire used in the first stage, participants were asked about their perceptions of the likelihood of being punished if caught committing the relevant legal offences. The influence of their perception on their choice of behaviour was then tested using Fisher's Exact Test, but the results support no significant influence. Table 7 contains the percentages of choice of behaviour by perception of degree of likelihood of being punished and Table 8 shows the results of Fisher's Exact test.

Table 7.
Percentages of choice of behaviour in each situation by perception of degree of likelihood of legal punishment

	Bribing or not police officers			Applying or not for a legal permit to put up a food stand in the street			Registering businesses or not with the tax office			Urinating or not in the street		
	Unlaw. behav.	Law. Behav.	Total	Unlaw. behav.	Law. behav.	Total	Unlaw. behav.	Law. behav.	Total	Unlaw. behav.	Law. behav.	Total
Highly likely	9.7%	6.5%	16.2%	22.6%	9.7%	32.3%	19.4%	9.7%	29.1%	29%	9.7%	38.7%
Likely	12.9%	3.2%	16.1%	12.9%	9.7%	22.6%	16.1%	3.2%	19.3%	29%	6.5%	35.5%
Not very likely	51.6%	9.7%	61.3%	29%	3.2%	32.2%	45.2%	3.2%	48.4%	12.9%	3.2%	16.1%
Unlikely	6.5%	0%	6.5%	12.9%	0%	12.9%	3.2%	0%	3.2%	9.7%	0%	9.7%
Total	80.6%	19.4%	100%	77.4%	22.6%	100%	83.9%	16.1%	100%	80.6%	19.4%	100%

Source: Compiled by the author.

Table 8.
Results of Fisher's Exact Test for association between choice of behaviour in each situation and perception of likelihood of punishment

	Bribing or not police officers	Applying or not for a legal permit to put up a food stand in the street	Registering businesses or not with the tax office	Urinating or not in the street
Fisher's Exact Test Exact Sig. (2-sided)	0.710	0.280	0.322	1.00

Source: Compiled by the author.

Participants' perception of the likelihood of being punished for bribing, not applying for legal permission to sell food in the street, and not registering a business with the tax office is significantly low, which could explain that a large number of participants in these cases chose an unlawful course of action. More specifically, of 67.8% of participants who believe it is unlikely or not very likely that they will be punished for bribing 58.1%

chose an unlawful course of action; of 51.6% of those who believe it is unlikely or not very likely that they will be punished for not registering a business with the tax office 48.4% chose unlawful behaviours; and of 45.1% of those who believe it is unlikely or not very that they will be punished for not having legal permission to sell food in the street 41.9% decided for unlawful behaviours. This pattern might suggest that it is more likely to commit a legal offence if you believe the risk of punishment is very low or non-existent, which would very much accord with the tenets of deterrence theory.

This interpretation, however, is challenged by the percentages of the urinating in the street situation and other tendencies in Table 7. In the urinating in the street situation, out of 74.2% of participants who believe it is highly likely or likely to be punished for committing this legal offence 58% would still urinate in the street. Out of 48.4% of those who believe it is highly likely or likely to be punished for not registering a business with the tax office, 35.5% would nonetheless not register a business with the tax office. And a similar tendency can be seen in the applying for legal permission to put up a food stand in the street situation, where, although 54.9% of participants believe it is highly likely or likely to be punished for not having legal permission to sell food in the street, 35.5% would sell food in the street without legal permission. Together with the higher p values shown in Table 8, the percentages described in the previous paragraph and in this paragraph suggest that people's perception of the likelihood of being punished does not rate high in their considerations about whether to commit a legal offence or not, for regardless of whether they believe it is highly likely, likely, not very likely or unlikely to be punished, the majority would still decide for an unlawful course of action. This conclusion disproves the explanations of deterrence theory.

Something worth noting is the contrast between the factual degree of certainty of punishment in Mexico and participants' perception of the likelihood of being punished. According to the results of the 2013 National Survey of Victimisation and Perception of Public Security, of 33,090,263 crimes committed, 5.08% were reported, 0.49% were investigated and only 0.33% were punished (cited in Amparo Casar, 2015, p. 56). This means that 99.51% of crimes in Mexico are not investigated, and 99.7% are not punished. It would be safe to say that in Mexico people who commit legal offences generally get away with it. In contrast, Table 7 shows that only a minority of individuals are aware of this fact, for very few people believe it is unlikely that they will be punished for committing the relevant legal offences.

5. Pluralistic ignorance

An unexpected result was found when comparing participants' personal normative beliefs and their normative social expectations. More concretely, when participants were asked whether they personally approve of unlawful behaviour, the majority responded negatively although they believe others do approve of unlawful behaviour. In other words, most participants believe others approve of unlawful behaviour significantly more than they personally do. This shows an inaccurate perception about others' normative beliefs, which is likely to be caused by the belief that others do in fact break the law.

Clearly, if people witness constant legal offences in their environment either personally or vicariously, it is reasonable to believe that unlawful behaviour is approved of by others. However, in some situations this normative belief is false and generates the phenomenon of 'pluralistic ignorance'.

'Pluralistic ignorance' is a "socio-psychological phenomenon that involves a systematic discrepancy between people's private beliefs and public behaviour in certain contexts" (Bjerring et al., 2014, p. 2445). Bicchieri defines it as a "belief trap" (Bicchieri, 2017, p. 44) where perceived consensus of normative social expectations differs from objective consensus, for "each member of a group believes her personal normative beliefs and preferences are different from those of similarly situated others, even if public behaviour is identical" (Miller & McFarland, 1987, cited in Bicchieri, 2017, p. 42). Thus, a case of pluralistic ignorance occurs when:

a) People hold the true belief that others engage in a particular behaviour, i.e. breaking the law, because they in fact engage in said behaviour, but
b) also hold the false belief that others believe one ought to engage in the behaviour because, in fact,
c) most people hold the belief that one ought not to engage in said behaviour.

In order to detect pluralistic ignorance, information about personal normative beliefs are gathered and compared to their second-order beliefs about others' normative beliefs (normative social expectations). In all cases, comparisons between personal normative beliefs and normative social expectations show this kind of discrepancy as detailed in Table 9.

Table 9.
Percentages of normative social expectations and personal norms

	Bribing or not police officers		**Applying for legal permit or not to put up a food stand in the street**		**Registering or not businesses with the tax office**		**Urinating or not in the street**	
	Normative Social Expectation	**Personal Norm**	**Normative Social Expectation**	**Personal Norm**	**Normative Social Expectation**	**Personal Norm**	**Normative Social Expectation**	**Personal Norm**
Unlawful behaviour	58.1%	29.0%	41.9%	29.0%	58.1%	25.8%	61.3%	32.3%
Lawful behaviour	41.9%	71.0%	58.1%	71.0%	41.9%	74.2%	38.7%	67.7%
Total	100%	100%	100%	100%	100%	100%	100%	100%

Source: Compiled by the author.

Table 9 shows clearly that in all cases the percentages of normative social expectations of unlawful behaviour are larger than the percentages of personal norms of unlawful behaviour and, concomitantly, the percentages of normative social expectations of lawful behaviour are smaller than the percentages of personal norms of lawful behaviour. In other words, in most situations a majority of participants believe others approve of unlawful behaviour but actually most participants disapprove of unlawful behaviour. Correspondingly, in most situations a majority of participants approve of lawful behaviour, but a smaller percentage believe others approve of lawful behaviour. For all situations, I ran related-samples McNemar test with a p value of 0.05, two-tailed, to see whether these differences were statistically significant and, as shown in Table 10, with one exception, they were significant.

Table 10.
Results of related-samples McNemar test of differences between normative social expectations and personal norms

	Bribing or not police officers	**Applying for legal permit or not to put up a food stand in the street**	**Registering or not businesses with the tax office**	**Urinating or not in the street**
Distribution of values across Normative Social Expectations and Personal Norms Exact Sig. (2-sided test)	.012	.344	.013	.022

Source: Compiled by the author.

These results suggest that, although Mexicans do engage in unlawful behaviour, they do not approve of it. In fact, most participants appear to prefer lawful courses of action, but they do not behave according to their own normative beliefs. Clearly, Mexicans feel that there are many situations where they have to compromise their personal normative beliefs and behave according to how they believe things are done. They might believe that going with the collective flow, as it were, is actually the most rational course of action in the sense that they use the least amount of resources while obtaining a maximum utility.

6. Conclusions

This article presents the results of an experimental research guided by two questions, namely, 'does knowledge of the legal punishments associated with particular legal breaches incline Mexicans to obey the law?' and 'do social norms of unlawful behaviour influence Mexicans' unlawful behaviour?'. The first question draws its independent variable from deterrence theory and the second question does so from normative theory of

law-abidance. The study conducted an experimental survey to a sample of 31 adult Mexicans living in Mexico City at the time of the study. The statistical tests, however, did not show that knowledge of legal sanctions inclines Mexicans to obey the law, nor the existence of social norms of unlawful behaviour. The statistical tests did show a sharp and statistically significant discrepancy between participants' legal behaviour, normative beliefs and personal beliefs, which suggests a case of pluralistic ignorance. These results would have to be confirmed in a larger study with a representative sample in order to be conclusive.

References

Adler de Lomnitz, L. (1993). Cómo Sobreviven los Marginados. Siglo XXI Editores.

Ajzenman, N. (2021). The Power of Example: Corruption Spurs Corruption. American Economic Journal: Applied Economics, 13(2), 230–257. Online: http://doi.org/10.1257/app.20180612

Almond, G. & Verba, S. (1989). The Civic Culture. Political Attitudes and Democracy in Five Nations. Sage Publications. Online: http://doi.org/10.1515/9781400874569

Amparo Casar, M. (2015). Mexico. Anatomía de la Corrupción. CIDE/IMCO.

Barrett, J. & Gaus, G. (2020). Laws, Norms, and Public Justification: The Limits of Law as an Instrument of Reform. In S. A. Langvatn, M. Kumm & W. Sadurski (Eds.), Public Reason and Courts (pp. 201–228). Cambridge University Press. Online: http://doi.org/10.1017/9781108766579.009

Bicchieri, C. (2006). The Grammar of Society. The Nature and Dynamics of Social Norms. Cambridge University Press. Online: http://doi.org/10.1017/CBO9780511616037

Bicchieri, C., Lindemans, J. W. & Jiang, T. (2014). A Structured Approach to a Diagnostic of Collective Practices. Frontiers in Psychology, 5(1418), 1–14. Online: http://doi.org/10.3389/fpsyg.2014.01418

Bicchieri, C. (2017). Norms in the Wild. How to Diagnose, Measure, and Change Social Norms. Oxford University Press. Online: http://doi.org/10.1093/acprof:oso/9780190622046.001.0001

Bjerring, J. C., Hansen, J. U. & Linding Pedersen, N. J. L. (2014). On the Rationality of Pluralistic Ignorance. Synthese, 191(11), 2445–2470. Online: http://doi.org/10.1007/sl1229-014-0434-1

Camacho Beltrán, E. & García González, F. (2020). El concepto de corrupción y el pacto constitucional mexicano. In J. A. Cruz Parcero (Eds.), Los Derechos Sociales en México. Reflexiones sobre la Constitución de 1917 (pp. 389–433). Instituto de Estudios Constitucionales del Estado de Querétaro.

ENCUP – Encuesta Nacional Sobre Cultura Política. Online: www.encup.gob.mx/Encup/Encup

Fix Fierro, H., Flores, J. I. & Valadés, D. (Eds.) (2017). Los Mexicanos y su Constitución. Tercera Encuesta Nacional de Cultura Constitucional. Centenario de la Constitución de 1917. IIJ/UNAM. Online: https://bit.ly/3FCohHs

Girola, L. (2011). La Cultura de la Transgresión. Anomias y Cultura del 'Como si' en la Sociedad Mexicana. Estudios Sociológicos, 29(85), 99–129. Online: http://doi.org/10.24201/es.2011v29n85.131

González Casanova, P. (1981, September 1). La cultura política de México. Nexos. Online: www.nexos.com.mx/?p=3914

Kahan, D. M. (2000). Gentle Nudges vs Hard Shoves: Solving the Sticky Norms Problem. The University of Chicago Law Review, 67(3), 607–645. Online: http://doi.org/10.2307/1600336

Morris, S. D. (2011). Mexico's Political Culture: The Unrule of Law and Corruption as a Form of Resistance. Mexican Law Review, 3(2), 327–342. Online: https://bit.ly/3Y9JH5W

Resultados de la Quinta Encuesta Nacional sobre Cultura Política y Prácticas Ciudadanas (ENCUP). (2012). IIJ/UNAM.

Sarsfield, R. (2012). The Bribe Game: Microfoundations of Corruption in Mexico. The Justice System Journal, 33(2), 215–234. Online: https://doi.org/10.1080/0098261X.2012.10768012

Stuntz, W. J. (2000). Self-Defeating Crimes. Virginia Law Review, 86(8), 1871–1899. Online: http://doi.org/10.2307/1073832

Tomlinson, K. D. (2016). An Examination of Deterrence Theory: Where Do We Stand? Federal Probation Journal, 80(3), 33–38. Online: https://bit.ly/3BlagLQ

Transparency International (2021). Corruption Perception Index. Online: www.transparency.org/en/cpi/2021

Tyler, T. R. (2006). Why People Obey the Law. Princeton University Press. Online: http://doi.org/10.2307/j.ctv1j66769

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 109–137.

DOI: 10.53116/pgaflr.2022.2.5

How Can Governmental Incentives Inspire Youth to Be More Engaged in Environmental Protection?

An Analysis of Factors Affecting Djiboutian Young People's Engagement Toward the Environment

Kadir Aden*

* University of Djibouti, Faculty of Law, Economics, and Management, Department of Law and Politics, e-mail: kadir.dirir4@gmail.com

Abstract: During the past years, environmental protection and adopting countermeasures against climate change have been on the agenda of many East African countries, as well as western nations, although a common challenge confronted by policymakers is directing young people's interest toward the environment. Therefore, the purpose of this paper is to explore the impact of certain factors that can be adopted by government bodies as a strategy to make youth more engaged in environmental activities. An electronic questionnaire was completed by Djiboutian young people from February 2022 to late June 2022. We retrieved 440 out of 500 questionnaires; a structural equation model was subsequently employed to assess the effects of government rewards, interactions, capacity building and favourable policies on youth engagement. According to the results, all the factors demonstrated a positive impact on youth engagement; consequently, we conclude that young people have tendencies to engage in activities that revolve around environmental issues when there is a reward system in place. Likewise, establishing an interactive platform that accommodates young people's opinions while the government provides reasonable feedback will stimulate engagement. Reasonably, embracing policies in favour of the environment will depict the government as an effective, responsible leader, retroactively influencing young people's perceptions. On the other hand, allowing youths to participate in the process of policies formulation will guarantee a long-term societal engagement, since, pragmatically speaking, these adopted policies will eventually influence their future; at the same time, we conclude that providing proper training and building young people's capacity will provide them with fundamental personal skills, while simultaneously enhancing their sustainable attitude to respond adequately to environmental challenges consequently assisting the national government with their environmental endeavours. Finally, the following paper contributes to the relevant existing body of literature, by providing empirical evidence on different types of government initiatives that could make young people more engaged and inclined in environmental issues.

Keywords: youth engagement, environmental protection, Djibouti, public governance, sustainability, SEM approach

1. Introduction

Djibouti's national environment law (Law n°51/AN/09/6ème)[1] clearly says: "The environment of Djibouti is a national heritage, an integral part of the world heritage. Its preservation is therefore of primary interest at the local, national, regional, and international levels in order to guarantee the needs of current and future generations." Supported by Article 3 of the same law, "the preservation of the environment constitutes a major interest of the nation, and it is the responsibility of each citizen residing in the Republic of Djibouti to engage and participate in the development of environmental policy". Looking closely at these two articles, it gives the perception that the national environment is protected to its utmost. Yet, in 2016, the global metrics of the environmental index classified the Republic of Djibouti as 164th out of 178 countries, scoring 45.29 respectively, just above Burkina Faso and below Ethiopia (EPI, 2016). Although, in the following years until now, the country's performance has been improving; for instance, it ranked 135th in ecosystem vitality and 148th in environmental health, and it was among the top 10 among middle and low-income countries for adopting policies in favour of the environment. However, despite reaching an acceptable index on environmental policies, Djibouti's performance was limited to habitat protection, marine protected areas, and policy formulation without fully significantly implementing them. This implies the government is still struggling to keep the effectiveness of the domestic environment in areas such as water treatment, waste management, recycling and tree cutting. As a result, there is a need to employ a mechanism that will help the government manage and protect the national environment more effectively.

It is well documented in the literature that threats to the environment primarily come from the harmful behaviour of certain people (Kormos & Gifford, 2014; Kazdin, 2009), hence there is an ongoing need for strategies to alter individual actions for people to be more positively engaged in environmental activities (recycling, energy conservation, efficient travel behaviour) and simultaneously assist the government in its endeavours (Bamberg, 2006). Here comes the concept of youth engagement in environmental protection. Indeed, young people have more potential to create an impact at global and local levels nowadays, and their meaningful engagement in climate decisions and actions can increase the possibilities of a sustainable future achievement (Talwar et al., 2011). And certainly, the government recognises the fact that young people's ideas, energy and vision are essential for societal development, as they can also influence their peers and communities to engage in sustainable projects (Shaharir, 2012), nevertheless, directing young people toward environmental issues has been a challenge for the Djiboutian Government. Despite the country's youth being estimated to comprise 60% of the population, their apathy for political and environmental activities is transparent by their lack of active involvement.

Scholars of public administration and civic engagement characterised young people as an asset and resource (Varney, 2007; Watts & Flanagan, 2007; Wheeler & Edlebeck, 2006); therefore, providing adequate capacity building and opportunities will foster their participation (Carlson 2006). Additionally, other researchers consider inviting young

[1] Loi n°51/AN/09/6ème L portant Code de l'Environnement.

people to public work that has real consequences will change their perception (Perri, 2007; Meadowcroft, 2007; Zilans, 2013); likewise, Chawla and Cushing (2007) mentioned that participation in environmental organisations and witnessing pollution and environmental destruction can be an additional motivating factor to stay engaged. In the same vein, Watts & Flanagan (2007) suggested the use of multiple paths to engage young people, such as: while they are a member of a religious organisation, community college, or military school. Similarly, Arnold et al. (2009) proposed a framework based on educational programmes that promote caring for the environment. Furthermore, Onuoha et al. (2018) and He et al. (2018), have investigated the effectiveness of establishing a reward system on citizen engagement; interestingly, their positive evidence was in contradiction with Timlett & Williams (2008), who found almost non-existent evidence of engagement from a reward system. However, these articles were focused mostly on developed countries with more concentration on the community than the young people themselves, whereas they explore the impact of these factors (reward and capacity building) separately.

Hence, there is an active call for further investigating youth engagement in environmental issues. Although recent papers have examined the role of financial reward on environmental protection (Kaiser et al., 2020; Dardanoni & Guerriero, 2021), perceived environmental risk in stimulating youth engagement (Shafiei & Maleksaeidi, 2020) and the influence of personal moral norms (Ru et al., 2019; Wallis & Loy, 2021), however, no paper, to the author's knowledge examined motivator factors infusing youth engagement in environmental preservation while juxtaposing government incentives to materialise such sustainable behaviour. Therefore, the current paper adopts several neglected factors such as governmental reward, favourable policies, interaction and capacity building on youth environmental involvement, hoping it will assist the Djiboutian Government in better responding, managing and directing young people toward environmental activities more effectively. A structural equation model was employed to catch the effect level of each of these factors on youth engagement, considering the fact that this study is one of the first to apply an SEM approach to capture the effectiveness of youth programmes in further stimulating collective sustainable participation in a low-middle income African country, while overcoming the sample gap in the literature (Wallis & Loy, 2021).

2. A brief collection of previous studies

2.1. Youth engagement

Studies of public engagement define youth engagement as an authentic process where youths engage actively in an event or a programme about which they are motivated and excited (Bråten et al., 2009; Kotzé, 2006). This is supported by Browne et al. (2011), who considers youth engagement a positive mechanism that leads youths to develop their personal skills, particularly when the activity in which they have been engaged makes them feel effective and provides opportunities for skill building. Although, some authors utilise the term youth engagement and youth participation in an interchangeable

manner (Hart, 2013), while others associate youth engagement with youth development (Maynard, 2008). Albeit variations in definition, the core of these terms has the same significance in the context of acknowledging the value of young people in society as civic actors (Bryson et al., 2010). For instance, Stewart (2010) states that young people influence democratic society by cooperating with the government and other stakeholders by becoming active participants; as a consequence, they evolve their civic ability and habits. In a similar vein, Arnold et al. (2009) argue that engagement is not about gathering a mass collective and directing them to a particular issue (political issues, social action, fundraising); in contrast, it has to include several programmes that enhance people's knowledge and understanding of the issues at hand and subsequently empowering them.

Similarly, engagement is not about the quantity, such as the number of youths who are involved, but instead about the quality of engagement and participation, and to what extent their endeavours influence the policy-making process and contribute to national environment betterment (Nyoni, 2009). Interestingly, Lorenzoni et al. (2007) accentuated an approach that is based on emphasising the cognitive, affective and active components. According to their approach, engaging in environmental protection and preservation has to rely on a personal state of connection, establishing a link between climate issues and cognitive engagement, instead of an engagement driven by mere public participation in policy-making: in other words, it is not totally sufficient to know about climate change in order to be involved; rather, people need to find a connection with climate issues, to care about and be motivated thereafter so they can take the necessary measures. Barber (2009) also suggested that listening to the voices of youth and creating a bidirectional consultation based on reciprocity is fundamentally required, whereas, recognising youth as a salient stakeholder in the decision-making process will stimulate their engagement, as these policies will have a direct effect on their future lives.

Some authors proposed several instruments (religious, moral values and perceived benefits of the engagement) to motivate youth in order to become more engaged. For instance, Pancer & Pratt's (1999) motivation model was how the volunteering experience will help with landing jobs, enrich university applications, project socially acceptable behaviour, etc. On the other hand, Rose-Krasnor (2009) noted that establishing sustaining factors that incorporate individuals in ecological footprint mitigation will eventually lessen authorities' unilateral burden; nonetheless, authorities should first take into consideration how to facilitate collective participation and ease barriers for such engagement in order to infuse a sustainable, healthy society based on all-of-society approach. In a similar study, O'Neill (2007) investigated Canadian youths' engagement in politics and, according to their conclusions, education and income explained much of the youth backdrop and apathy towards political and other local participatory activities. Whereas, other potential studies found that youth engagement is influenced by their milieu and surroundings, especially when they observe someone who is close (a family member) volunteering and projecting positive socially acceptable behaviour (Bouman et al., 2020). Keeping in line with the terms of behaviour, youths who were previously part of, and engaged in environmental activities are more prone to maintain a sustainable attitude (Pancer & Pratt, 1999; Chawla & Cushing, 2007). Despite previous literature noting that youths have little to

contribute to policy drafting by manifesting noticeable apathy towards government activities, recent studies revealed how to motivate youths to engage in certain activities. Harris et al. (2010) and O'Brien et al. (2018) suggested the adverse argument, by confirming that young people have more considerable interest in social movements and social activities. Yet, essential efforts are required in order to generate collective engagement, although they noted that these efforts may vary depending on the mainstream strategies employed such as via leadership skills, public speaking and meeting with the participants (Erbstein, 2013). Therefore, in the current study, we will examine and illustrate factors that considerably influence Djiboutian youth engagement in the process of environmental preservation.

2.2. Governmental reward

The reward system has been used and underlined by many authors. For instance, Chiang & Birtch (2008) presented the reward as a value that a government, employer or entity is willing to offer to a citizen, employee or civil worker in exchange for their contributions. Cook & Hunsaker (2001) view reward systems as programmes established by organisations to reward employees and encourage them in order to generate productive results. Therefore, the absence of reward will create an unpleasant environment by decreasing the person's efforts and engagement. Kaiser & Wilson (2004) also mentioned that the presence of reward may be a pleasant or good motivator for some people whereas, the lack of it might be perceived as a strong de-motivator. It is worth noting that the reward might be in form of cash incentives (with strict monetary value) or non-cash incentives (gifts, coupons) and both depend on the provider and how the recipient appreciates them (Shaffer & Arkes, 2009).

Clearly, as in any other sector, environmental protection necessitates joint action between the government and young people. However, the provision of public goods is required to achieve the above-mentioned collective action (Chamberlin, 1978). Empirical studies have demonstrated that citizen engagement can contribute to government effectiveness, but tangible or intangible rewards given by the competent authority can be regarded as a motivator and, in the best case, maintain the mainstream of this engagement, and indeed, this particular reciprocity shows how government incentives generate commitment from citizens (Kim & Darnall, 2016; Cropanzano & Mitchell, 2005).

According to Garcés et al. (2002), collective engagement in environmental protection does not always generate personal benefits. In contrast, environmental protection, such as recycling or reducing waste, is more of a universal activity and does not lead to an immediate benefit on an individual level (Carlson, 2001, p. 1242). However, Elster (1989) and Olson (1971) argued that if members (young people, citizens) are rational egotists, neither collective issues nor universal morals will warrant collective action. Nevertheless, if schemes that entail penalties, such as charging fees on the amount of waste disposed of, people will increase recycling. Alternatively, other services, such as rewards by exchanging recycling for goods with a value, will reduce waste disposal. Other scholars also covered government rewards and their effect; Cohen et al. (2017) and He (2018), both illustrated how government financial incentive mechanisms can contribute to more green buildings,

supported by (Onuoha et al., 2018), who stated that monetary green building incentives have a significant effect on green building adoption and development. In a similar study, Chen et al. (2021) looked into the role of government policy in embracing green buildings. Surprisingly, they found that government subsidy is a major factor that leads to opting for and accepting green building technology. Likewise, Li et al. (2020) proved that increasing the income of developers can effectively promote the development of prefabricated buildings. Researching exactly the same theme of reward effect, (Chung & Poon, 1996) found in their survey that respondents showed a willingness to return batteries if there was a refundable deposit. Whereas, Schultz et al. (1995), Williams & Taylor (2004) and Bennett et al. (2008), suggested that economic rewards, such as valuable instruments are strongly effective in boosting community engagement and participation in environmental protection. On the other hand, Allen et al. (1993), investigated the reliability of coupons in stimulating aluminium recycling in the United States and could not find any association. Similarly, Scott (1999) discovered the effect of reward incentives on the recycling intensity in some communities in the Toronto area is relatively non-existent. Another study by Timlett & Williams (2008), demonstrated that only 12% of the households expressed that the reward scheme was the main factor that motivated them to waste recycling. In accordance with scholars' findings, we propose the following hypothesis:

H1: Government rewards have a positive effect in stimulating young people's engagement toward environmental protection.

2.3. Interaction

Public authorities and political parties pour hundreds of millions into public communication. However, despite spending a massive amount, dissatisfaction and disengagement are still present (Smelser & Baltes, 2001; Cavaye, 2004; Craig, 2006; Scharlemann et al., 2020). Research reveals that public authorities focus more on distributing their messages than establishing a bidirectional relationship that consists of speaking and listening. Although the government listens, it is often overshadowed by a poor or intermittent interaction led by one party, showing that 95% of communication resources are surrounded by information dissemination and promotion without fully taking public opinion into consideration (Macnamara, 2016). The Brexit referendum vote is an example; according to Macnamara (2017) the lack of listening of the UK government to their citizens, as the authority vehemently put a lot of emphasis on campaigning without guidance from citizens' opinions, demonstrated a severe absence of understanding public concerns; similarly, the U.S. Donald Trump election revealed how the political parties in Washington, D.C. were not active and in touch with public opinion, subsequently losing public support.

Interestingly, among the articles reviewed by Hügel & Davies (2020), on factors hindering climate engagement, three elements can only be considered substantial: incorporating psycho-social and behavioural adaptation to climate change into policy processes, the paradox of involving considerable stakeholders, and the difficulty of governance transition toward a framework that absorbs citizens' demand. And this can ultimately be traced back to a lack of shared understanding of public involvement for climate adaptation across

disciplines; insufficient articulation of processes involving citizen engagement. Alternatively, Thew et al. (2020) investigated how through the years young people's justice claims in the context of climate had been evolved. According to the longitudinal data the author noted several variety claims; 1. youth manifested their future vulnerability; indeed, this reasoning of discomfort from young people can be related to the current unprecedented climate change adaptation backdrop; 2. the second claim captured by the panel data was the poor interaction between civil servants and young people.

However, from another threshold of public interaction, Christensen et al. (2020) hypothesised the significance of cognitive abilities, for better executive functioning. To demonstrate how these little aspects affect interactions with the state, Christensen et al. (2020) used examples of three universal life circumstances: scarcity, health issues and age-related cognitive decline. The findings show that these variables both raise the possibility that people may require state help and impair executive performance, which may amplify the negative impact of burdensome interactions with the state, limiting access to benefits and raising inequality. It is worth noting that the author does not overvalue the cardinal role of state–citizen interaction but warns that a greater dependency would lead to the state's underperformance.

By now it is clear that interaction stimulates community engagement in order to achieve certain considerable sustainable development. But when the case involves young people, it might be quite different, since the mere idea of establishing a smooth interaction and sound communication will be complicated if not challenging. Delli Carpini (2000) studied the cause and root of youth disengagement and concluded that young people are less trusting of their fellow citizens, projecting lower concern and enthusiasm for politics and public affairs, supporting this statement with their empirical finding that only 19% of 18–29-year-olds follow politics. Accordingly, these youths will be unlikely to engage in community organisations due to their inability to feel a sense of identity, pride or obligation. For instance, Stoneman (2002) founder of "Youth Builds" in Somerville, USA, advocates a new leadership development approach, stressing that the skill of listening is how young people respond, believing that citizens need to be considered important, and pinpointed that effective engagement of young people in civic and other sectors requires an interaction based on a solid, good foundation and continuity.

It is well-known that, in order to build a sustainable society, the participation and engagement of every citizen is crucial. They can act as decision-makers, such as expressing their opinion by interacting with the legitimate competent authority. In fact (Yang & Callahan, 2005; Sommerfeldt, 2013; Willis, 2012; Taylor & Kent, 2014; Johnston & Lane, 2019; Piqueiras et al., 2020), mentioned that effective engagement requires constant interactions between the public and community and this can not only contribute to collective engagement but also to mutual trust and reciprocity. Besides, in the field of public administration, researchers discovered that when citizens participate in a discussion forum or join a political group, whether it is a physical or virtual interaction, there is a higher level of engagement in civic action. Therefore, the following hypothesis is proposed:

H2: Interaction positively stimulates youth's engagement in environmental betterment.

2.4. Favourable policies

Knoepfel et al. (2007) defined policy as a package of decisions or actions taken and implemented by a competent public authority to address and resolve a public problem (e.g. unemployment, inflation, gender inequality, pollution). The policy is regarded as favourable if it reaches a specific goal or identifies socially acceptable and desirable issues (Moynihan, 2012; Jager et al., 2020). Mettler and Soss (2004) explored how desirable policies influence citizens and recapped in their article that appropriate policies shape citizens' patterns of behaviour and mobilise interest groups by making them more politically engaged and bolstering their level of commitment to that issue; for them, policies are a way of conveying messages to the public about civic engagement. Additionally, Edelman (1964) remarked that policies can intimidate or comfort, foster beliefs or evoke mass collective participation. In a similar spectrum, Feldman & Conover (1983), Kinder & Sears 1985 and Krosnick (1990) investigated the effect of favourable policies on citizens in stimulating votes; according to their summary, government targets the population with policies that it deems relevant to them, and subsequently, citizens acquire a sense that these policies attribute great importance to their cause, thus proceed to vote to the candidate with the most suitable policy.

Scholars in public management have argued that the process of adopting favourable policies appears successful in making citizens (young people) more socially engaged; however, they emphasised the importance of including actors (civil society and citizens) in the process of policy formulation: as a result, this will produce an effective level of public service which is based on a co-produced and co-created framework that is tackling the most serious issues (Alford, 2009). Moreover, collaborative activities between the two parties will motivate each person (young people and government) to achieve sustainable governance and fasten societal transformation; in other words, youths will behave in the given social context with action that contributes to the country's most challenging issues (Phang et al., 2014). Nevertheless, this certainly depends on how promising, appealing and beneficial these policies are in order to infuse an impact on young people. The next hypothesis is proposed:

H3: Favourable policies positively influence young people's engagement in the context of protecting the national environment.

2.5. Capacity building

Capacity building is regarded as a vital method of promoting growth, performance and effectiveness. The concept of utilising capacity building includes a variety of activities, such as improving skills and providing training that aspires to enhance and develop the internal and external capacity of a non-profit organisation or people (Doherty & Mayer, 2003). Castelloe et al. (2002) employed capacity building on a grassroots organisation with funds below $150,000. They noted that this organisation would need an injection of skills, training and support in terms of financing; they added how these steps would assist the grassroots organisation in upgrading their operational skills to provide

compelling services, and subsequently, after they had acquired the necessary support, they could meet the expectations of the community. Indeed, government and community can benefit from young people's involvement in all aspects of the country's development process (Granger, 2010; Narksompong & Limjirakan, 2015); however, to materialise such an engagement, the government needs an approach that consists of providing support and empowering young people, which, in turn, will lead to long-term sustainability. Some prominent researchers suggested activity setting theory as a mechanism to engage young people (Hawe et al., 2009; Case & Hunter, 2012; O'Donnell & Tharp, 2012); their framework embraces establishing development programmes.

Alicea et al. (2012) and Yohalem & Martin (2007) also suggested that competent authorities need to promote a variety of competencies instead of only relying on attracting young people to a special issue. Such authors recommend focusing on developing youths' individual and social systems by providing them with sufficient empowerment to become productive in society. Ultimately, these authors emphasise capacity building, which comprises physical, emotional, personal and intellectual development rather than a pathological focus. Hence, investing in youth resources and their potential skills will generate the desired outcome (Geldhof et al., 2013; Pereira & Freire, 2021). Equally, Schusler & Krasny (2010) and Johnson et al. (2009), studied the engagement of indigenous youths[2] in environmental sustainability, and they concluded that engagement in environmental activities depends on teaching them, so that later, when they accumulate sufficient education incorporating environmental awareness, climate change and ecological footprint impacts, they can ultimately serve as pillars who promote and engage in environmental sustainability, consequently contributing to community development. In a similar context, Latulippe & Klenk (2020) emphasised the distinction between knowledge and governance and conveys the impression that knowledge co-production aids in the governance of global environmental change. However, using indigenous knowledge to guide environmental decisions implies that indigenous peoples are participants in opposition to self-governing countries with rights and obligations, therefore, respecting their knowledge systems and territory is rather a perquisite. Yet in most cases, indigenous sovereignty is typically not persevered when knowledge is only used as information for group decision-making. The author also underlined the significance of integrating co-production with indigenous knowledge in environmental governance, while also urging public administration scholars to work to better "integrate" indigenous knowledge into western science and pave the way for indigenous research leadership.

In another situation, in 1986, the Nigerian government introduced a programme to encourage and attract youths to the agriculture sector so that the country could secure and ensure a stable food supply. The programme was based on providing vocational training for young people; surprisingly it later created job opportunities (Latopa & Abd Rashid 2015). Miklosi (2007) also investigated three factors *(respecting, listening, and empowering)* that increase American teenagers' civic engagement, the paper concluded

[2] In general, compared to other groups, indigenous peoples in most parts of Africa, South America and Central Asia tend to have less access and relatively limited quality of education. Therefore, it is important to make efforts to guarantee that indigenous peoples have access to culturally and linguistically appropriate education that does not promote or lead to unintentional assimilation.

that when young people participate in extracurricular activities, such as student government, political clubs, vocational and community organisations, they tend to project strong engagement and are more active in political activities. Equally, Barnett & Brennan (2006) and Brennan (2007), demonstrated that when youth engage in social issues, they accumulate knowledge, master social skills, and get a sense of purpose; as a result, they become long-term participants in the development process. Consequently, the current study proposes the following hypothesis:

H4: Capacity building infuses positive sustainable engagement among young people.

3. Methodology

3.1. Participants

3.1.1. Defining the participants

According to the African Charter, youth are considered people between 15–35 years, yet the concept of young peoples' delineation provided by the UN might differ (15–24). However, considering that the current paper exclusively focuses on an African country, and is an active member of the African Union it will be preferable to employ the African charter. The application of such a chart will provide us with a cardinal extension of the dataset by reaching a decent number of people while simultaneously overcoming the sample gap in the literature.

3.1.2. Data collection and demographic analysis

The survey included a total of 440 respondents; the questionnaire was posted on social media platforms by making it available for the Djiboutian public setting from February 2022 to late June 2022 and targeting youths before entering the summer break. Other feasible communication tools were utilised to acquire enough respondents; for instance, university students use WhatsApp groups in order to communicate and share information regarding university news announcements, for instance, the official WhatsApp group of law student major surpasses 200 students, only in their first year, whereas, second- and third-year students are estimated to be 50–60: other faculty students participated in the survey, as well. Overall, our sample size exceeds the absolute minimum recommended data for SEM which is 250 cases (Westland, 2010). It can be seen in Table 1 that female respondents represented 53.4% while male participants were 46.6%. In terms of age, the largest segment of respondents was between 21 and 25 with 48.9%, followed by those who were 26–30 (34.1%). Regarding educational level, most of our participants were bachelor holders/students (55.0%) while PhD holders/students comprised only 3.0%. As for their income, only 132 seem to be getting an income,

which can be relatively explained by the high unemployment that exists in the job market of the country, and with Covid-19 it became worse; in 2021 the Republic of Djibouti had the second highest unemployment rate in Africa, according to Statista.

Table 1.
Respondent's profile

Demographic characteristics	**N = 440**	**Frequency**	**%**
Gender	Female	235	53.4%
	Male	205	46.6%
Age	15–20	59	13.4%
	21–25	215	48.9%
	26–30	150	34.1%
	31–35	16	3.6%
Educational level	High school	78	17.7%
	Bachelor	242	55.0%
	Master	107	24.3%
	PhD	13	3.0%
Income	Yes	132	30.0%
	No	308	70.0%

Source: Compiled by the author.

3.2. Questionnaire

A self-administered questionnaire was created for this study, see Table 2. For the sake of convenience of distribution and completion, an online survey was conducted. The first part of the questionnaire focused on the demographics of the respondents, followed by the factor of youth engagement; composed of five items inspired by (Szagun & Pavlov, 1995), then, in order to assess the effect of governmental reward on young people's engagement, six items were established. Two were newly created while four were inspired by (Chen, 2015; Lin & Lo, 2015), while the three other sections were structured as follows; three items for capacity building were taken from (Bennett et al., 2014), and six items on favourable policies were taken from (Webler & Tuler, 2000); however, only four items were maintained because of their low loading, and the last section was about interaction, with six items based on (Heikkila & Roussin Isett, 2007) but due to the low loading, only four items were retained respectively. The respondents rated the items via a 5-point Likert scale (1 = strongly disagree to 5 = strongly agree).

Table 2.
The questionnaire constructs

Constructs	Items	Measures
Youth engagement	YE1	I advocate for the environment and inform others about climate issues.
	YE2	Overall, I am engaged in environmental activities at the national level (such as cleaning the beach, using bikes and purchasing sustainable products).
	YE3	I value the environment to the point where I will sacrifice certain luxuries.
	YE4	I am always involved in climate change activities and volunteer whenever I get the chance.
	YE5	I believe I have an important responsibility toward the environment.
Governmental reward	GR1	The government should give rewards to people who are engaged in environmental protection.
	GR2	Governmental reward such as monetary incentives plays an important role in how I perform.
	GR3	Personally, I will be engaged frequently in climate change activities if there was a rewarding system.
	GR4	Acknowledging my engagement efforts from the government contributes positively to my climate advocacy.
	GR5	Giving away simple awards such as electronics, prizes and books are enough to encourage me.
	GR6	I feel valued and appreciated when I am rewarded.
Capacity building	CB1	I feel the government is not providing us with enough training that will help us respond to environmental challenges.
	CB2	I believe I need more resources to prepare myself for environmental challenges.
	CB3	Generally, we are lacking encouragement and empowerment from the authority.
	CB4	More coaching and education about climate issues would increase my engagement.
	CB5	My environmental engagement will be irrelevant and feeble without proper training.
	CB6	Even if I engage in environmental protection activities, I will need external support.

Favourable policies	FP1	The government is inclusive and considers our voice when adopting legislation.
	FP2	The policies in force are strong enough and protect the national environment.
	FP3	Tougher laws against waste disposal and pollution should be put in place.
	FP4	Personally, I want to influence climate policies proposed by the government.
Interaction	IN1	The government established several interaction initiatives and platforms for the youth about climate issues in the past 3 years.
	IN2	I can function and protect the environment without governmental interaction initiatives.
	IN3	I am satisfied with the lack of interaction with the authority.
	IN4	As a youth, I believe the government listens to our environmental concerns.

Source: Compiled by the author.

3.3. Statistical analysis

Structural equation modelling was utilised in order to measure the significant effect of the independent (governmental reward, capacity building, favourable policies, interaction) variables on the main variable (youth engagement). We used SPSS version 28 to prepare the descriptive statistics, as well as the reliability analysis of the collected data (Cronbach alpha), while Amos 24 was used to conduct the structural equation modelling. According to Tommasetti et al. (2017), structural equation modelling is considered a powerful tool for causal effect, so SEM was the most appropriate tool for this research. However, before demonstrating the results, it is important to assess the model fit of the whole model. The model of fitness consists of the following indexes; Incremental Fix Index "IFI", Tucker Lewis Index "TLI", Comparative Index "CFI", Goodness of Fit Index "GFI", Adjusted Goodness-of-Fit Index "AGFI", and Root Mean Square Error of Approximation "RMSEA" (Kamboj et al., 2018).

4. Finding and results

First, the model fit of this study can be seen in Table 3; all the values were within their respective common acceptance levels, and the five-factor model demonstrated a good fit. According to the table, the Chis-square/df (CMIN) ratio shows 1.955, and it is in line with (Schumacker & Lomax's 2004) statement: "If the Chi-square/df ratio is less than 5 then the model and the data are an excellent match." The fact that our result is closer to 1 is considered an excellent match for the model. Similarly, the "IFI" has a parameter estimate of 0.952, and the "TLI" index shows 0.945, while the "CFI" has 0.952; continuing with the model fit, our "GFI" has 0.916 and "AGFI" displays

0.897. All the indices were greater than 0.800, as they were all closer to 1 (Garson, 2012), hence, the aforementioned values are considered excellent. Furthermore, our RMSEA displayed an estimate of 0.047 which is adequate since it is lower than the suggested value by Hair Jr et al. (2010) which is 0.07.

Table 3.
Goodness-of-fit measurements of the model

Goodness-of-Fit measures of the model	**Parameter estimates**	**Minimum cutoff**	**Suggested by**
Chis-square/df	1.955	< or = 5.00	(Schumacker & Lomax, 2004)
Incremental Fix Index (IFI)	0.952	> 0.80	(Garson, 2012)
Tucker Lewis Index (TLI)	0.945	> 0.80	(Hu & Bentler, 1999)
Comparative Index (CFI)	0.952	> 0.80	(Hair Jr et al. 2010)
Goodness of Fit Index (GFI)	0.916	> 0.80	(Hu & Bentler, 1999)
Adjusted Goodness-of-Fit Index (AGFI)	0.897	> 0.80	(Gefen et al. 2000)
RMSEA	0.047	> 0.07	(Gefen et al. 2000)

Source: Compiled by the author.

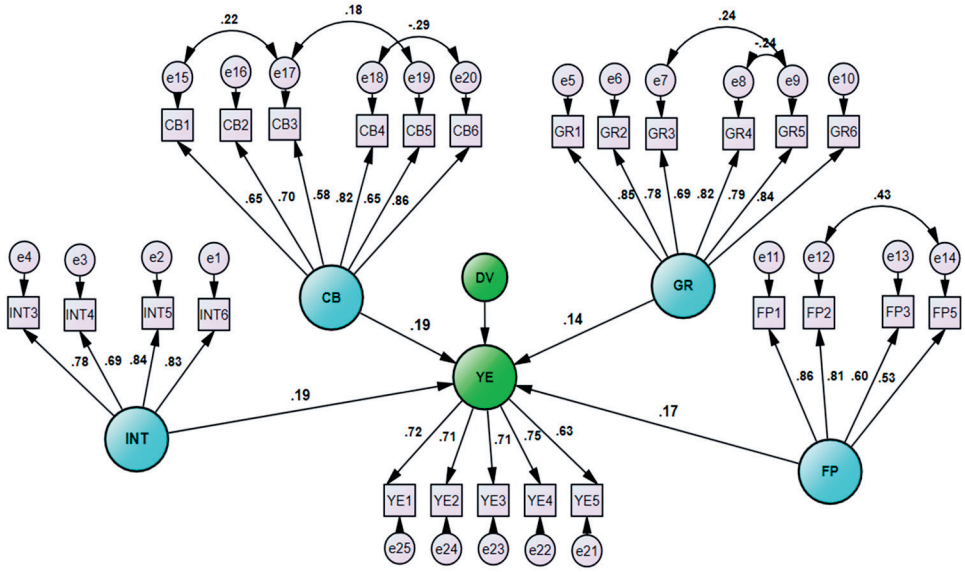
The next step was to analyse the convergent validity of the factors by assessing via Average Variance Extracted (AVE), and composite reliability (CR). Figure 1 shows all the factor loading and they are all higher than 0.5 which is the recommended value by (Chin, 2008), followed by composite reliability (CR), which are excellent and surpass the recommended threshold, which is 0.6; additionally, the AVE which reflects the overall amount of variance in the indicators accounted for by the latent constructs exceeds the recommended value of 0.5 (Hair Jr et al., 2014), observe Table 4. Furthermore, before conducting the SEM, all the items were subjected to factor analysis in SPSS, in order to avoid discrepancy and mixing in variables, since some of the items were newly created; however, the items were placed and divided into 6 categories, contradicting our framework, which was composed of 5 constructs. The two independent items that were put into the same category were interaction constructs; after deleting them and repeating the principal component analysis, all the items were perfectly placed in their expected categories (five categories) as a result validating our framework, (keeping in mind that the two same items were lower than 0.5 in the loading process after employing Amos), the same with favourable policies, despite loading in the same category in factor analysis; 2 of the 6 items were below the desired value and therefore, were discarded. Similarly, the KMO test ensured the overall measure of sampling adequacy, which was 0.826 higher than the value recommended by (Chan & Idris, 2017) which is of > 0.50; additionally, Bartlett's test provided support for the appropriateness of the factor analysis, which was significant at $p < 0.01$.

Table 4.
Descriptive statistics and reliability of the constructs

Constructs	Items	Min.	Max.	Mean	StD	Loading	Cronbach's Alpha	CR	AVE
Youth engagement	YE1	1	5	3.91	1.132	.721	.833	.834	.501
	YE2	1	5	4.02	1.078	.712			
	YE3	1	5	4.02	1.048	.713			
	YE4	1	5	4.03	1.012	.746			
	YE5	1	5	4.22	.997	.631			
Governmental reward	GR1	1	5	4.00	1.025	.851	.912	.912	.635
	GR2	1	5	4.10	.984	.782			
	GR3	1	5	3.87	1.011	.698			
	GR4	1	5	4.04	1.006	.817			
	GR5	1	5	4.04	.921	.787			
	GR6	1	5	4.03	.955	.838			
Capacity building	CB1	1	5	4.04	1.006	.650	.865	.867	5.18
	CB2	1	5	4.12	.948	.701			
	CB3	1	5	4.07	.941	.583			
	CB4	1	5	4.13	1.076	.816			
	CB5	1	5	4.03	1.005	.646			
	CB6	1	5	4.16	1.016	.863			
Favourable policies	FP1	1	5	3.89	1.165	.861	.816	.824	.548
	FP2	1	5	3.97	1.121	.815			
	FP3	1	5	4.08	.928	.593			
	FP4	1	5	4.09	1.092	.533			
Interaction	IN1	1	5	2.49	1.161	.781	.869	.865	.617
	IN2	1	5	2.88	1.285	.686			
	IN3	1	5	2.74	1.180	.835			
	IN4	1	5	2.64	1.035	.830			

Source: Compiled by the author.

Figure 1.
SEM with its indicator



Source: Compiled by the author.

Table 5 presents the results of the hypothesis, the values displayed in the table are the standardised beta; we notice that the variable Interaction possesses the highest impact on youth's engagement with a strong significant p-value (β: 0.190; p = <.0.00), therefore supporting our hypothesis 4. It is worth noting, that the mechanism of young people to engage deeply in the environment had been impeded by a relative lack of active interaction with public authority. On average our responders are concerned about the government's limited interaction with potential stakeholders, and indeed this dichotomy has contributed to a server backdrop of youth participation. Capacity building also demonstrated a strong significant *p-value,* as it appears in the table, while the direct effect of capacity building on youth engagement toward activities that involve environmental protection is estimated to be (β: 0.189; p <.0.00); hence, in accordance with this result, our second hypothesis is also supported. Accordingly providing training and enhancing young people's skills to accommodate environmental challenges will reduce the government's unilateral responsibility, see Table 5. This is followed by the favourable policies factor, and interestingly it has a positive significant effect on youth engagement; (β:.169; p <.0.002); observe Figure 1, consequently justifying and providing further validation to our third hypothesis. This implies the current strategy of non-inclusiveness in the Djiboutian context should be abandoned and adversely turned toward a more inclusive societal approach involving other stakeholders aside from the government in environmental policy formulation, and in the best scenario, this will further provide validation to "Article 3" of the Djiboutian national environment law in the sense of strictly abiding by the collective engagement promoted by the article. Finally, the impact

of government rewards on youth engagement displayed a positive impact, with a significant p-value (β: 0.139; p <.0.008) which validates our hypothesis that young people will be more deeply engaged in environmental and climate activities when there is a reward system in place.

Table 5.
Structural estimates (hypotheses testing)

	Hypothesis	Standardised estimates	T-value	P-value	Decision
H1	*Governmental reward → YE*	.139	2.638	.008	Accepted
H2	*Capacity building → YE*	.189	3.412	***	Accepted
H3	*Favourable policies → YE*	.169	3.035	.002	Accepted
H4	*Interaction → YE*	.190	3.445	***	Accepted
*YE = Youth engagement					

Source: Compiled by the athour.

5. Discussion

This study's findings contribute to the existing body of knowledge, by providing empirical support for the factors that influence young people's engagement. Despite the fact that scholars have highlighted the need to explore incentives and initiatives proposed by government and public authority and their effect on youth's engagement, little research has been done on this topic, as previous studies focused deeply on community engagement while assessing it from different facades without fully taking into account young people's potential; therefore, this article is among the first to explore and identify the significant effect of governmental reward, interaction, favourable policies and capacity building on youth engagement. In addition, SEM was utilised to assess the causal relationship between the constructs and to examine their level of significance.

Considering our results, all the proposed hypotheses were supported, for instance, the interaction factor had the highest direct effect on youth engagement (β: 0.190; p = <.0.00), our results are in line with (Johnston & Lane 2018; Canel et al., 2022). The following results reveal that Djiboutian young people are more inclined toward environmental activities if the government establishes several platforms that consist of interaction and consulting. Yet, this has been hindered by constrained governmental agenda that lacks collective inclusivity. In a more formal way, the national government is focused heavily on campaigns that address specifically and solely what they want to say; as a result, this excessive emphasis on message transmission on climate issues might be perceived by the government as a catalytic factor of youth engagement, nonetheless, this provokes only a one-way direction run by the authority.

Indeed, the government has a tendency to limit its interaction with young people; a particular reason could be attributed to the lack of providing a mechanism that absorbs young people's opinions or recommendations on certain societal issues, consequently reducing their engagement and further reinforcing their apathy toward societal

transformation and environmental activities (O'Neill, 2007). On the other hand, young people have this belief that environmental and community improvement merely falls under governmental umbrella. However, interaction is a dialogue not only involving one single party (government or youth) but to explore how they can add value to each other and create mutual input for a better national outcome. The government needs to acknowledge that young people are the main vehicle for overcoming environmental issues; as suggested by Piqueiras et al. (2020), young people are considered the backbone of any nation. Hence, the government is required and advised to recognise the concept of being an audience, listening and adopting a mechanism that is based on consecutive interaction with young people rather than a periodic, unidirectional interaction led on government terms. Moreover, youth engagement is fully directed by their perception and the extent of influence the government has on them. In other words, an uninterrupted commitment to environmental issues is rare, but when young people realise, they have been acknowledged; their passion for engagement is driven by a sense of inclusiveness and confidence, simply because they value this interaction and, as a result, their engagement level increases. Likewise, the government needs to note that listening to and consulting with youths does not only enhance the level of engagement, it helps administrators define the situations more carefully, whereas an interaction platform will offer the Djiboutian Government a real reinvention agency and easier policy management process.

The results also showed that capacity building had a positive significant effect on engagement (β: 0.189; p <.0.00). This provides insight into how building young people's skills in the context of environmental awareness and sustainability development boosts their level of participation in the national environment. From the constructs, our participants believe that the national government does not provide enough training that will assist them in overcoming environmental challenges. Several authors mentioned the critical role that capacity building plays when it is implemented in a specific population (Alicea et al., 2012; Schusler & Krasny, 2010; Iwasaki, 2016), as their recommendations included that providing training will promote growth, effectiveness and performance. Interestingly, our empirical findings that providing training and capacity building will help the government to make young people more engaged in environmental issues is in line with their results. Similarly, capacity building is not limited to physical training and providing resources, as much as this might be salient; on the contrary, it is insufficient. Therefore, including education and environmental awareness will produce higher support in the level of engagement, for instance, it is unlikely that someone who does not have sufficient information on climate impact will be engaged in environmental activities. As a solution, public authorities need to establish several impactful capacity building programmes, which can be achieved by building partnerships with private and educational institutions so that in retrospect could introduce some voluntary courses that promote environmental awareness in order for young people to accumulate sufficient knowledge of the climate issues that threaten their country and the wider region.

Keeping in line with the results, favourable policies also demonstrated a positive impact on youth engagement (β:.169; p <.0.002); our findings support the statement made by (Mettler & Soss, 2004), who considered that desirable policies influence citizens' patterns and mobilise them to undertake impactful action, thus, adversely becoming

politically engaged. Although our scope was investigating youth engagement from two points (one checking if the policies adopted by the government are inclusive in nature by considering young people's voices, whereas the second was if these policies in question are strict enough in terms of protecting the environment and encouraging the already existing environmentalist to maintain their engagement). Many potential respondents voiced that little did the government consider their proposed policies or recommendation in the national environmental agenda, yet one of the elements on which the national environment law is based is on *(Principe de participation)* is a tenet and element of participation, which means that every citizen residing in the national territory is allowed to express and propose their ideas in order to respond better to climate change since the preservation of environment falls under the responsibility of every citizen.

Furthermore, the goal of incorporating young people's decisions in environmental policies will further project the existence of strong participatory governance, while at the same time, it predicts a better policy outcome by presenting the government as more equitable and transparent (Bishop & Davis, 2002; Kauneckis & Andersson, 2009). The fact that these strategies will affect their future is another reason to allow young people to influence these adopted policies by the government. However, effective engagement can only be reached when two conditions are met, first, finding civil society actors, and second, making sure that these actors are willing to contribute to the government's task at hand. Evidently, our results answered this, as we demonstrated how certain particular variables related to government strategies influence engagement. Continuing with the favourable policies factor, respondents were not satisfied with the current laws in place. This explains the low level of youth engagement in protecting the national environment, for instance – if the already existing laws are not sufficiently strict in protecting the environment (poor waste management, water pollution, overfishing, unnecessary tree cutting) the likelihood of participating in environmental activities is adversely, negatively affected by poor legislation. Accordingly, if the authority responsible demonstrated a sense of responsibility, and showed effectiveness in improving government service, commitment to public service, transparency and leadership, this will prevail and foster the level of engagement (Zamir & Sulitzeanu-Kenan, 2018; Hassan et al., 2021).

Finally, governmental rewards also had a significant effect on youth engagement, observe the estimate from Table 5 (β: 0.139; p <.0.008). The government should take into account that youth are inclined towards environmental activities if there is a reward system in place. We conclude that young people's actions are motivated when some incentives are offered in exchange for their engagement, therefore further confirming previous scholars' finding (Abila & Kantola, 2019; Maki et al., 2016; Onuoha et al., 2018). From the constructs, it should be noted that rewarding can take different forms, while the level of appreciation depends on the participants. For instance, the majority of the respondents were fine with no monetary incentives, such as giving away gifts, prizes and recognition ceremonies. The Djiboutian authorities could establish systems that provide bonuses, and coupons to young people whenever they engage in environmental protection activities. Bennett (2008) identified how rewarding citizens for their positive activities such as waste disposal can increase the level of commitment to environmental protection, by injecting friendlier environmental behaviour. While others did not find any link between the

reward system and environmental protection (Timlett & Williams, 2008), overall, our result adds support to previous findings on the positive effect of reward on engagement.

6. Recommendation

Considering the climate issues that menace the Republic of Djibouti and the Horn of Africa, the current government must develop certain strategies to combat drought while focusing on keeping the national environment safe. According to a report published by *The Guardian* on 20 August 2022, the drought in the Horn of Africa has displaced more than 21 million people (Agence-France Presse, 2022). However, this article is focusing more on national environmental issues; this includes how to protect natural habitats, waste management, and hastening the transition to renewable energies by deploying youths and directing them to these issues. Clearly, it is a challenge to deploy young people's potential skills toward a specific problem unless there is some motivating factor influencing their actions, and indeed demonstrating this was one of the main objectives of this study. Applying the results and the findings of this research at the national environmental level will assist the Djiboutian Government in dealing better with the environmental issue while at the same benefiting from young people's potential. In the context of government rewards, the country's status is a low-middle income country according to the World Bank development classification; therefore, rewarding could take other forms rather than a monetary incentive, such as simple recognition, prizes and giving items away. In other cases, when young people demonstrate uninterrupted environmental engagement, the government should consider providing reasonable rewards. Mostly because a small incentive will compensate their time and further reinforce their level of engagement. For instance, O'Neill (2007) investigated Canadian youth engagement in politics, and concluded that insufficient education and lack of income explained much of young people's apathetic attitude toward political activities and other participatory activities. Reasonably, education is considered an important factor, as it helps in building youths' confidence by providing adequate cognitive capacity while low income represents a barrier to engagement because, considering the reality that young people have insufficient access to public resources, including financial income, compared to their adult counterparts, thus rewarding will be a reasonable strategy. It is also recommended that the government should develop a waste management system that is based on rewards, such as creating a coupon strategy that allows young people to purchase certain limited items in exchange for their environmental activities and sustainable waste disposal. Public authorities should also consider increasing waste collection vehicles in certain communities instead of deploying exclusively to urban areas, simultaneously encouraging street sweepers and sanitation workers by providing them a total tax break, and continuing their salary even after retirement not in the sense of pension package, but a systematic flow of income for their long services.

Moreover, it is required of the current government to show resiliency and responsibility, such as educating young people about the benefit of preserving the national environment by establishing several programmes in institutes of public education, as the

current national curriculum lacks environmental subjects; it is therefore advised that the national government considers adopting certain educational strategies that will help young people to grow with an environmentally friendly mind-set from when they are still young; furthermore, depicting themselves as leaders will help young people to change their perspective of the government. Most Djiboutians are not interested in environmental issues, and a hindering factor is the lack of leadership. For instance, the mayor could prepare certain initiatives that involve community cleaning at weekends, informing citizens not only how this will help the national environment but demonstrating to young people how engaging in social issues can be fun by how it provides something different, and the opportunity to meet new people, build their experience and enriching their academic CV.

Similarly, investing in renewable energies will increase young people's appreciation of the efforts made by the government. Despite having policies that promote the transition to renewable energies, the country is far behind in its goal. Djibouti is notorious for it has abundant solar energy; the sun is present during almost the whole year, thus, installing more solar panels will help the government on mitigating the excessive dependence for energy transmission and exportation from neighbourhood countries, likewise, this will provide Djiboutian citizens to benefit from low electricity prices, since current electricity bills average is estimated to be more than USD350 per household. Moreover, the government needs to invest more in platforms that facilitate interaction between the government and young people, the idea of considering young people's outlooks and viewpoints as undeserving is becoming obsolete. Young people need to feel they have been listened to and heard while, in turn, the government is required to provide reasonable feedback and, adversely, this will make them feel more appreciated and acknowledged, in retrospect, their sense of trust in the government will increase, which in turn boosts their engagement level.

7. Conclusion

The Djiboutian Government has been struggling over the last years to make young people interested in environmental protection while reluctantly trying to discourage the harmful behaviour of some citizens, such as dumping their waste in public spaces and roads whilst the current regulations scarcely contribute to environmental protection. Consequently, the aim of this study was to provide a contribution to the already existing literature in the field of public administration, civic engagement, environmental behaviour and SDG goals. Four factors were selected (governmental reward, interaction, capacity building and favourable policies) to investigate their effect on youth engagement. A structural equation model was employed to explore the causal effects. All the factors had a positive effect on youth engagement. For instance, young people are more inclined to get involved in sustainable activities when there is a communication platform that is run through bi-directionality. In other words, the government needs to adopt the concept of being an audience while providing reasonable feedback to young people. It is important to note that the scope of environmental engagement can be challenging,

since environmental issues can be more complex and to some extent incorporate complicating factors. As a result, establishing a reward system will be the most appropriate way to increase young people's engagement, and in some cases a penalty system could accompany it; however, the Djiboutian penalty system, which prohibits harming the natural habitat, and imposes fines for improper disposal, has proved unfit for the task of safeguarding the environment from degradation; therefore, implementing an alternative solution, which makes young people more engaged in environmental activities and, at the same time, alters positively their actions and behaviour, by caring about the national environment is further required, and as it has been shown from these results, rewarding them will stimulate their engagement and encourage them to become involved in more sustainable activities.

The issues of young people's long exclusion from the public sphere can be disregarded when we take as a reference the Djiboutian environmental law that requires the participation of every citizen in national environmental politics; however, a mere law cannot generate this engagement unless young people's opinions, suggestions and worries have been taken into consideration and are included in the environmental agenda, since these adopted policies will influence their future. On the other hand, providing proper training and building young people's capacity will assist the government in addressing the environmental issue more effectively while ensuring for the long-term, a more sustainable society that prioritises the environment.

Finally, the study has several limitations, the paper has focused more on young people's sustainable and environmental attitude while juxtaposing the government's role in stimulating such behaviour, therefore, future studies could address the role of young people in ecological footprint mitigation. A threshold of an environmental sector that has a limited literature paper. Moreover, scholars could consider incorporating mediating or moderating factors such as income, and education level while simultaneously applying a comparative study between people in accordance with their generation category belonging such as Baby Boomers, Generation X, Millennials, etc. Noticeably, these comparative studies will prevent responder biases for instance, since the current study focused on young people it is likely our responders were willing to portray socially acceptable responses, therefore, future studies should consider applying a comparative study. Furthermore, instead of utilising the role of government, upcoming studies could conduct on the private sector, considering how in recent years private entities are becoming more competitive in the sense of opting for a more sustainable approach.

References

Abila, B. & Kantola, J. (2019). The Perceived Role of Financial Incentives in Promoting Waste Recycling – Empirical Evidence from Finland. Recycling, 4(1), 4. Online: https://doi.org/10.3390/recycling4010004

Agence-France Presse (2022, August 20). Horn of Africa Drought Places 22 Million People at Risk of Starvation, Says UN. The Guardian. Online: http://bit.ly/3CVR1ZS

Alford, J. (2009). Engaging Public Sector Clients: From Service-Delivery to Co-Production. Springer. Online: https://doi.org/10.1057/9780230235816

Alicea, S. P., Pardo, G., Conover, K., Gopalan, G. & McKay, M. (2012). Step-Up: Promoting Youth Mental Health and Development in Inner-City High Schools. Clinical Social Work Journal, 40(2), 175–186. Online: https://doi.org/10.1007/s10615-011-0344-3

Allen, J. D., Davis, D. & Soskin, M. (1993). Using Coupon Incentives in Recycling Aluminium: A Market Approach to Energy Conservation Policy. The Journal of Consumer Affairs, 27(2), 300–318. Online: https://doi.org/10.1111/j.1745-6606.1993.tb00750.x

Arnold, H. E., Cohen, F. G. & Warner, A. (2009). Youth and Environmental Action: Perspectives of Young Environmental Leaders on Their Formative Influences. The Journal of Environmental Education, 40(3), 27–36. Online: https://doi.org/10.3200/JOEE.40.3.27-36

Bamberg, S. (2006). Is a Residential Relocation a Good Opportunity to Change People's Travel Behaviour? Results from a Theory-Driven Intervention Study. Environment and Behaviour, 38(6), 820–840. Online: https://doi.org/10.1177/001391650528509

Barber, T. (2009). Participation, Citizenship, and Well-Being: Engaging with Young People, Making a Difference. Young, 17(1), 25–40. Online: https://doi.org/10.1177/110330880801700103

Barnett, R. V. & Brennan, M. A. (2006). Integrating Youth into Community Development: Implications for Policy Planning and Program Evaluation. Journal of Youth Development, 1(2), 5–19. Online: https://doi.org/10.5195/jyd.2006.382

Bennett, J. V., Ylimaki, R. M., Dugan, T. M. & Brunderman, L. A. (2014). Developing the Potential for Sustainable Improvement in Underperforming Schools: Capacity Building in the Socio-Cultural Dimension. Journal of Educational Change, 15(4), 377–409. Online: https://doi.org/10.1007/s10833-013-9217-6

Bennett, R., Savani, S. & Ali-Choudhury, R. (2008). Effective Strategies for Enhancing Waste Recycling Rates in Socially Deprived Areas. Journal of Customer Behaviour, 7(1), 71–97. Online: https://doi.org/10.1362/147539208X290398

Bishop, P. & Davis, G. (2002). Mapping Public Participation in Policy Choices. Australian Journal of Public Administration, 61(1), 14–29. Online: https://doi.org/10.1111/1467-8500.00255

Bouman, T., Steg, L. & Zawadzki, S. J. (2020). The Value of What Others Value: When Perceived Biospheric Group Values Influence Individuals' Pro-Environmental Engagement. Journal of Environmental Psychology, 71. Online: https://doi.org/10.1016/j.jenvp.2020.101470

Bråten, I., Gil, L., Strømsø, H. I. & Vidal-Abarca, E. (2009). Personal Epistemology across Cultures: Exploring Norwegian and Spanish University Students' Epistemic Beliefs about Climate Change. Social Psychology of Education, 12(4), 529–560. Online: https://doi.org/10.1007/s11218-009-9097-z

Brennan, M. (2007). Community Development in the West of Ireland: Twenty Years on in the Killala Area. Community Development Journal, 42(3), 330–347. Online: https://doi.org/10.1093/cdj/bsl017

Browne, L. P., Garst, B. A. & Bialeschki, M. D. (2011). Engaging Youth in Environmental Sustainability: Impact of the Camp 2 Grow Program. Journal of Park and Recreation Administration, 29(3). Online: http://js.sagamorepub.com/jpra/article/view/2256

Bryson, J., Piper, J. & Rounsevell, M. (2010). Envisioning Futures for Climate Change Policy Development: Scenarios Use in European Environmental Policy Institutions. Environmental Policy and Governance, 20(5), 283–294. Online: https://doi.org/10.1002/eet.542

Canel, M. J., Barandiarán, X. & Murphy, A. (2022). What Does Learning by Listening Bring to Citizen Engagement? Lessons from a Government Program. Public Relations Review, 48(1). Online: https://doi.org/10.1016/j.pubrev.2021.102132

Carlson, A. E. (2001). Recycling Norms. California Law Review, 89, 1231–1300. Online: https://doi.org/10.2307/3481159

Carlson, C. (2006). The Hampton Experience as a New Model for Youth Civic Engagement. Journal of Community Practice, 14(1–2), 89–106. Online: https://www.tandfonline.com/doi/abs/10.1300/J125v14n01_06

Case, A. D. & Hunter, C. D. (2012). Counterspaces: A Unit of Analysis for Understanding the Role of Settings in Marginalized Individuals' Adaptive Responses to Oppression. American Journal of Community Psychology, 50(1), 257–270. Online: https://doi.org/10.1007/s10464-012-9497-7

Castelloe, P. W., Watson, Th. & White, C. (2002). Participatory Change: An Integrative Approach to Community Practice. Journal of Community Practice, 10(4), 7–31. Online: https://doi.org/10.1300/J125v10n04_02

Cavaye, J. (2004). Governance and Community Engagement: The Australian Experience. In W. R. Lovan, M. Murray & R. Shaffer (Eds.), Participatory Governance: Planning, Conflict Mediation and Public Decision Making in Civil Society (pp. 85–102). Routledge. Online: https://doi.org/10.4324/9781315247335

Chamberlin, J. (1978). A Diagrammatic Exposition of the Logic of Collective Action. In C. A. Hooker, J. J. Leach & E. F. McClennen (Eds.), Foundations and Applications of Decision Theory (pp. 17–18). Springer. Online: https://doi.org/10.1007/978-94-009-9792-9_2

Chan, L. L. & Idris, N. (2017). Validity and Reliability of the Instrument Using Exploratory Factor Analysis and Cronbach's Alpha. International Journal of Academic Research in Business and Social Sciences, 7(10), 400–410. Online: http://dx.doi.org/10.6007/IJARBSS/v7-i10/3387

Chawla, L. & Cushing, D. F. (2007). Education for Strategic Environmental Behaviour. Environmental Education Research, 13(4), 437–452. Online: https://doi.org/10.1080/13504620701581539

Chen, L., Gao, X., Hua, C., Gong, S. & Yue, A. (2021). Evolutionary Process of Promoting Green Building Technologies Adoption in China: A Perspective of Government. Journal of Cleaner Production, 279. Online: https://doi.org/10.1016/j.jclepro.2020.123607

Chen, Y. J. (2015). The Role of Reward Systems in Product Innovations: An Examination of New Product Development Projects. Project Management Journal, 46(3), 36–48. Online: https://doi.org/10.1002/pmj.21499

Chiang, F. F. & Birtch, T. A. (2008). Achieving Task and Extra-Task-Related Behaviors: A Case of Gender and Position Differences in the Perceived Role of Rewards in the Hotel Industry. International Journal of Hospitality Management, 27(4), 491–503. Online: https://doi.org/10.1016/j.ijhm.2007.08.009

Chin, W. W. (2008). Structural Equation Modelling in Marketing: Some Practical Reminders. Journal of Marketing Theory and Practice, 16(4), 287–298. Online: https://doi.org/10.2753/MTP1069-6679160402

Christensen, J., Aarøe, L., Baekgaard, M., Herd, P. & Moynihan, D. P. (2020). Human Capital and Administrative Burden: The Role of Cognitive Resources in Citizen-State Interactions. Public Administration Review, 80(1), 127–136. Online: https://doi.org/10.1111/puar.13134.

Chung, S. S. & Poon, C. S. (1996). The Attitudinal Differences in Source Separation and Waste Reduction between the General Public and the Housewives in Hong Kong. Journal of Environmental Management, 48(3), 215–227. Online: https://doi.org/10.1006/jema.1996.0074

Cohen, C., Pearlmutter, D. & Schwartz, M. (2017). A Game Theory-Based Assessment of the Implementation of Green Building in Israel. Building and Environment, 125, 122–128. Online: https://doi.org/10.1006/jema.1996.0074

Cook, C. W. & Hunsaker, P. L. (2001). Management and Organizational Behaviour. Irwin/McGraw-Hill.

Craig, R. T. (2006). Communication as a Practice. In G. J. Shepherd, J. St. John & T. Striphas (Eds.), Communication as... Perspectives on Theory, (pp. 38–49). Sage Publications. Online: https://dx.doi.org/10.4135/9781483329055.n5

Cropanzano, R. & Mitchell, M. S. (2005). Social Exchange Theory: An Interdisciplinary Review. Journal of Management, 31(6), 874–900. Online: https://doi.org/10.1177/0149206305279602

Dardanoni, V. & Guerriero, C. (2021). Young People's Willingness to Pay for Environmental Protection. Ecological Economics, 179. Online: https://doi.org/10.1016/j.ecolecon.2020.106853

Delli Carpini, M. X. (2000). Gen.com: Youth, Civic Engagement, and the New Information Environment. Political Communication, 17(4), 341–349. Online: https://doi.org/10.1080/10584600050178942

Doherty, S. & Mayer, S. E. (2003). Capacity Building Programs for Nonprofit Programs. Journal of Human Development, 4(1), 85–111.

Edelman, M. J. (1964). The Symbolic Uses of Politics. University of Illinois Press.

Elster, J. (1989). The Cement of Society: A Study of Social Order. Cambridge University Press. Online: https://doi.org/10.1017/CBO9780511624995

EPI (2016). Global Metrics for the Environment. The Environmental Performance Index. Online: https://epi.yale.edu/epi-results/2022/country/dji

Erbstein, N. (2013). Engaging Underrepresented Youth Populations in Community Youth Development: Tapping Social Capital as a Critical Resource. New Directions for Youth Development, (138), 109–124. Online: https://doi.org/10.1002/yd.20061

Feldman, S. & Conover, P. J. (1983). Candidates, Issues and Voters: The Role of Inference in Political Perception. The Journal of Politics, 45(4), 810–839. Online: https://doi.org/10.2307/2130414

Garcés, C. L., Lafuente, A., Pedraja, M. & Rivera, P. (2002). Urban Waste Recycling Behaviour: Antecedents of Participation in a Selective Collection Program. Environmental Management, 30(3), 378–390. Online: https://doi.org/10.1007/s00267-002-2601-2

Garson, G. D. (2012). Factor Analysis. Statistical Associates Publishers.

Gefen, D., Straub, D. & Boudreau, M. C. (2000). Structural Equation Modelling and Regression: Guidelines for Research Practice. Communications of the Association for Information Systems, 4(1), 7. Online: https://doi.org/10.17705/1CAIS.00407

Geldhof, G. J., Bowers, E. P. & Lerner, R. M. (2013). Special Section Introduction: Thriving in Context: Findings from the 4-H Study of Positive Youth Development. Journal of Youth and Adolescence, 42(1), 1–5. Online: https://doi.org/10.1007/s10964-012-9855-7

Granger, R. C. (2010). Understanding and Improving the Effectiveness of After-School Practice. American Journal of Community Psychology, 45(3), 441–446. Online: https://doi.org/10.1007/s10464-010-9301-5

Hair Jr, J. F., Sarstedt, M., Hopkins, L. & Kuppelwieser, V. G. (2014). Partial Least Squares Structural Equation Modelling (PLS-SEM): An Emerging Tool in Business Research. European Business Review, 26(2), 106–121. Online: https://doi.org/10.1108/EBR-10-2013-0128

Hair Jr, J. F., Black, W. C., Babin, B. J. & Anderson, R. E. (2010). Multivariate Data Analysis: A Global Perspective. 7th Edition. Pearson Education.

Harris, A. W., Wyn, J. & Younes, S. (2010). Beyond Apathetic or Activist Youth: 'Ordinary' Young People and Contemporary Forms of Participation. Young, 18(1), 9–32. Online: https://doi.org/10.1177/110330880901800103

Hart, R. A. (2013). Children's Participation: The Theory and Practice of Involving Young Citizens in Community Development and Environmental Care. Routledge. Online: https://doi.org/10.4324/9781315070728

Hassan, H. A., Zhang, X., Ahmad Bayiz, A. & Liu, B. (2021). Public Service Motivation and Employee Change-Supportive Intention: Utilizing the Theory of Planned Behaviour. Public Personnel Management, 50(2), 283–304. Online: https://doi.org/10.1177/0091026020934515

Hawe, P. S., Shiell, A. & Riley, Th. (2009). Theorising Interventions as Events in Systems. American Journal of Community Psychology, 43(3–4), 267–276. Online: https://doi.org/10.1007/s10464-009-9229-9

He, C., Wang, X. & Zhao, G. (2018). Developer's Willingness to Construct Green Dwellings in China: Factors and Stimulating Policies. Journal of Civil Engineering and Management, 24(5), 378–389. Online: https://doi.org/10.3846/jcem.2018.5185

Heikkila, T. & Roussin Isett, K. (2007). Citizen Involvement and Performance Management in Special-Purpose Governments. Public Administration Review, 67(2), 238–248. Online: https://doi.org/10.1111/j.1540-6210.2007.00710.x

Hu, L. T. & Bentler, P. M. (1999). Cutoff Criteria for Fit Indexes in Covariance Structure Analysis: Conventional Criteria Versus New Alternatives. Structural Equation Modelling: A Multidisciplinary Journal, 6(1), 1–55. Online: https://doi.org/10.1080/10705519909540118

Hügel, S. & Davies, A. R. (2020). Public Participation, Engagement, and Climate Change Adaptation: A Review of the Research Literature. Wiley Interdisciplinary Reviews: Climate Change, 11(4), e645. Online: https://doi.org/10.1002/wcc.645

Iwasaki, Y. (2016). The Role of Youth Engagement in Positive Youth Development and Social Justice Youth Development for High-Risk, Marginalised Youth. International Journal of Adolescence and Youth, 21(3), 267–278. Online: https://doi.org/10.1080/02673843.2015.1067893

Jager, N. W., Newig, J., Challies, E. & Kochskämper, E. (2020). Pathways to Implementation: Evidence on How Participation in Environmental Governance Impacts on Environmental Outcomes. Journal of Public Administration Research and Theory, 30(3), 383–399. Online: https://doi.org/10.1093/jopart/muz034

Johnson, L. R., Johnson-Pynn, J. S., Sweeney, S. S. & Williams, C. T. (2009). Youth Civic Action: Going Green, Going Global. EcoPsychology, 1(2), 75–84. Online: https://doi.org/10.1089/eco.2009.0007

Johnston, K. A. & Lane, A. B. (2018). Building Relational Capital: The Contribution of Episodic and Relational Community Engagement. Public Relations Review, 44(5), 633–644. Online: https://doi.org/10.1016/j.pubrev.2018.10.006

Johnston, K. A. & Lane, A. B. (2019). An Authenticity Matrix for Community Engagement. Public Relations Review, 45(4). Online: https://doi.org/10.1016/j.pubrev.2019.101811

Kaiser, F. G. & Wilson, M. (2004). Goal-Directed Conservation Behaviour: The Specific Composition of a General Performance. Personality and Individual Differences, 36(7), 1531–1544. Online: https://doi.org/10.1016/j.paid.2003.06.003

Kaiser, F. G., Henn, L. & Marschke, B. (2020). Financial Rewards for Long-Term Environmental Protection. Journal of Environmental Psychology, 68. Online: https://doi.org/10.1016/j.jenvp.2020.101411

Kamboj, S. S., Sarmah, B., Gupta, Sh. & Dwivedi, Y. K. (2018). Examining Branding Co-Creation in Brand Communities on Social Media: Applying the Paradigm of Stimulus-Organism-Response. International Journal of Information Management, 39, 169–185. Online: https://doi.org/10.1016/j.ijinfomgt.2017.12.001

Kauneckis, D. & Andersson, K. (2009). Making Decentralization Work: A Cross-National Examination of Local Governments and Natural Resource Governance in Latin America. Studies in Comparative International Development, 44(1), 23–46. Online: https://doi.org/10.1007/s12116-008-9036-6

Kazdin, A. E. (2009). Psychological Science's Contributions to a Sustainable Environment: Extending Our Reach to a Grand Challenge of Society. American Psychologist, 64(5), 339–356. Online: http://doi.org/10.1037/a0015685

Kim, Y. & Darnall, N. (2016). Business as a Collaborative Partner: Understanding Firms' Sociopolitical Support for Policy Formation. Public Administration Review, 76(2), 326–337. Online: https://doi.org/10.1111/puar.12463

Kinder, D. R. & Sears, D. O. (1985). Public Opinion and Political Action. Handbook of Social Psychology, 2, 659–741.

Knoepfel, P. L. (2007). Public Policy Analysis. The Policy Press. Online: https://doi.org/10.4324/9781315693965

Kormos, C. & Gifford, R. (2014). The Validity of Self-Report Measures of Proenvironmental Behaviour: A Meta-Analytic Review. Journal of Environmental Psychology, 40, 359–371. Online: https://doi.org/10.1016/j.jenvp.2014.09.003

Kotzé, L. J. (2006). Improving Unsustainable Environmental Governance in South Africa: The Case for Holistic Governance. Potchefstroom Electronic Law Journal, 9(1). Online: 10.4314/pelj.v9i1.43452

Krosnick, J. A. (1990). Government Policy and Citizen Passion: A Study of Issue Publics in Contemporary America. Political Behavior, 12(1), 59–92. Online: https://doi.org/10.1007/BF00992332

Latopa, A.-L. A. & Abd Rashid, Sh. N. S. (2015). The Impacts of Integrated Youth Training Farm as a Capacity Building Center for Youth Agricultural Empowerment in Kwara State, Nigeria. Mediterranean Journal of Social Sciences, 6(5), 524–524. Online: https://doi.org/10.5901/mjss.2015.v6n5p524

Latulippe, N. & Klenk, N. (2020). Making Room and Moving Over: Knowledge Co-Production, Indigenous Knowledge Sovereignty and the Politics of Global Environmental Change Decision-Making. Current Opinion in Environmental Sustainability, 42, 7–14. Online: https://doi.org/10.1016/j.cosust.2019.10.010

Li, X., Wang, Ch., Alashwal, A. & Bora, Sh. (2020). Game Analysis on Prefabricated Building Evolution Based on Dynamic Revenue Risks in China. Journal of Cleaner Production, 267. Online: https://doi.org/10.1016/j.jclepro.2020.121730

Lin, S. W. & Lo, L. Y.-S. (2015). Mechanisms to Motivate Knowledge Sharing: Integrating the Reward Systems and Social Network Perspectives. Journal of Knowledge Management, 19(2), 212–235. Online: https://doi.org/10.1108/JKM-05-2014-0209

Lorenzoni, I., Nicholson-Cole, S. & Whitmarsh, L. (2007). Barriers Perceived to Engaging with Climate Change among the UK Public and Their Policy Implications. Global Environmental Change, 17(3–4), 445–459. Online: https://doi.org/10.1016/j.gloenvcha.2007.01.004

Macnamara, J. (2016). The Work and 'Architecture of Listening': Addressing Gaps in Organization-Public Communication. International Journal of Strategic Communication, 10(2), 133–148. Online: https://doi.org/10.1080/1553118X.2016.1147043

Macnamara, J. (2017). Creating a Democracy for Everyone: Strategies for Increasing Listening and Engagement by Government. The London School of Economics and Political Science and University of Technology Sydney.

Maki, A., Burns, R. J., Ha, L. & Rothman, A. J. (2016). Paying People to Protect the Environment: A Meta-Analysis of Financial Incentive Interventions to Promote Proenvironmental Behaviors. Journal of Environmental Psychology, 47, 242–255. Online: https://doi.org/10.1016/j.jenvp.2016.07.006

Maynard, K. K. (2008). Fostering Youth Engagement: A Model of Youth Voice, Empowerment, and Participation. Masters Dissertation. Texas A&M University.

Meadowcroft, J. (2007). Who Is in Charge Here? Governance for Sustainable Development in a Complex World. Journal of Environmental Policy & Planning, 9(3–4), 299–314. Online: https://doi.org/10.1080/15239080701631544

Mettler, S. & Soss, J. (2004). The Consequences of Public Policy for Democratic Citizenship: Bridging Policy Studies and Mass Politics. Perspectives on Politics, 2(1), 55–73. Online: https://doi.org/10.1017/S1537592704000623

Miklosi, J. (2007). Respecting, Listening, and Empowering: Three Vital Factors of Increasing Civic Engagement in American Teenagers. National Civic Review, 96(2), 36–42. Online: https://doi.org/10.1002/ncr.176

Moynihan, D. P. (2012). Responsiveness to Reform Values: The Influence of the Environment on Performance Information Use. Public Administration Review, 72(s1), S95–S105. Online: https://doi.org/10.1111/j.1540-6210.2012.02653.x

Narksompong, J. & Limjirakan, S. (2015). Youth Participation in Climate Change for Sustainable Engagement. Review of European, Comparative & International Environmental Law, 24(2), 171–181. Online: https://doi.org/10.1111/reel.12121

Nyoni, D. (2009). Youth Participation in Addressing Global Challenges: The Promise of the Future. In P. B. Corcoran & P. Osano (Eds.), Young People, Education, and Sustainable Development (pp. 85–90). Wageningen Academic Publishers. Online: https://doi.org/10.3920/978-90-8686-691-5

O'Donnell, C. R. & Tharp, R. G. (2012). Integrating Cultural Community Psychology: Activity Settings and the Shared Meanings of Intersubjectivity. American Journal of Community Psychology, 49(1), 22–30. Online: https://doi.org/10.1007/s10464-011-9434-1

O'Brien, K., Selboe, E. & Hayward, B. M. (2018). Exploring Youth Activism on Climate Change. Ecology and Society, 23(3). Online: https://doi.org/10.5751/ES-10287-230342

Olson, M. (1971). The Logic of Collective Action: Public Goods and the Theory of Groups. Harvard University Press.

O'Neill, B. (2007). Indifferent or Just Different? The Political and Civic Engagement of Young People in Canada. Canadian Policy Research Network.

Onuoha, I. J., Aliagha, G. U. & Rahman, M. S. A. (2018). Modelling the Effects of Green Building Incentives and Green Building Skills on Supply Factors Affecting Green Commercial Property Investment. Renewable and Sustainable Energy Reviews, 90, 814–823. Online: https://doi.org/10.1016/j.rser.2018.04.012

Pancer, S. M. & Pratt, M. W. (1999). Social and Family Determinants of Community Service Involvement in Canadian Youth. In M. Yates & J. Youniss (Eds.), Roots of Civic Identity. International Perspectives on Community Service and Activism in Youth (pp. 32–55). Cambridge University Press. Online: https://doi.org/10.1017/CBO9780511751820.004

Pereira, T. & Freire, T. (2021). Positive Youth Development in the Context of Climate Change: A Systematic Review. Frontiers in Psychology, 12. Online: 10.3389/fpsyg.2021.786119. Online: https://doi.org/10.3389/fpsyg.2021.786119

Perri, M. (2007). Vaughan Youth Cabinet: Youth Participation in Community Planning and Design. Children, Youth and Environments, 17(2), 581–593. Online: http://www.jstor.org/stable/10.7721/chilyoutenvi.17.2.0581

Phang, C. W., Kankanhalli, A. & Huang, L. (2014). Drivers of Quantity and Quality of Participation in Online Policy Deliberation Forums. Journal of Management Information Systems, 31(3), 172–212. Online: https://doi.org/10.1080/07421222.2014.995549

Piqueiras, P., Canel, M. J. & Luoma-aho, V. (2020). Citizen Engagement and Public Sector Communication. In V. Luoma-aho & M.-J. Canel (Eds.), The Handbook of Public Sector Communication (pp. 277–287). Wiley-Blackwell. Online: https://doi.org/10.1002/9781119263203.ch18

Rose-Krasnor, L. (2009). Future Directions in Youth Involvement Research. Social Development, 18(2), 497–509. Online: https://doi.org/10.1111/j.1467-9507.2008.00506.x

Ru, X., Qin, H. & Wang, S. (2019). Young People's Behaviour Intentions Towards Reducing PM2.5 in China: Extending the Theory of Planned Behaviour. Resources, Conservation and Recycling, 141, 99–108. Online: https://doi.org/10.1016/j.resconrec.2018.10.019

Scharlemann, J. P., Brock, R. C., Balfour, N., Brown, C., Burgess, N. D., Guth, M. K. & Kapos, V. (2020). Towards Understanding Interactions between Sustainable Development Goals: The Role of Environment–Human Linkages. Sustainability Science, 15(6), 1573–1584. Online: https://doi.org/10.1007/s11625-020-00799-6

Schultz, P. W., Oskamp, S. & Mainieri, T. (1995). Who Recycles and When? A Review of Personal and Situational Factors. Journal of Environmental Psychology, 15(2), 105–121. Online: https://doi.org/10.1016/0272-4944(95)90019-5

Schumacker, R. E. & Lomax, R. G. (2004). A Beginner's Guide to Structural Equation Modelling. Psychology Press. Online: https://doi.org/10.4324/9781410610904

Schusler, T. M. & Krasny, M. E. (2010). Environmental Action as Context for Youth Development. The Journal of Environmental Education, 41(4), 208–223. Online: https://doi.org/10.1080/00958960903479803

Scott, D. (1999). Equal Opportunity, Unequal Results: Determinants of Household Recycling Intensity. Environment and Behaviour, 31(2), 267–290. Online: https://doi.org/10.1177/00139169921972100

Shaffer, V. A. & Arkes, H. R. (2009). Preference Reversals in Evaluations of Cash Versus Non-Cash Incentives. Journal of Economic Psychology, 30(6), 859–872. Online: https://doi.org/10.1016/j.joep.2009.08.001

Shafiei, A. & Maleksaeidi, H. (2020). Pro-Environmental Behaviour of University Students: Application of Protection Motivation Theory. Global Ecology and Conservation, 22. Online: https://doi.org/10.1016/j.gecco.2020.e00908

Shaharir, B. M. (2012). A New Paradigm of Sustainability. Journal of Sustainable Development, 5(1), 91–99. Online: http://dx.doi.org/10.5539/jsd.v5n1p91

Smelser, N. J. & Baltes, P. B. (2001). International Encyclopedia of the Social & Behavioral Sciences (Vol. 11). Elsevier.

Sommerfeldt, E. J. (2013). The Civility of Social Capital: Public Relations in the Public Sphere, Civil Society, and Democracy. Public Relations Review, 39(4), 280–289. Online: https://doi.org/10.1016/j.pubrev.2012.12.004

Stewart, M. (2010). Transforming Higher Education: A Practical Plan for Integrating Sustainability Education into the Student Experience. Journal of Sustainability Education, 1(1), 195–203.

Stoneman, D. (2002). The Role of Youth Programming in the Development of Civic Engagement. Applied Developmental Science, 6(4), 221–226. Online: https://doi.org/10.1207/S1532480XADS0604_9

Szagun, G. & Pavlov, V. I. (1995). Environmental Awareness: A Comparative Study of German and Russian Adolescents. Youth & Society, 27(1), 93–112. Online: https://doi.org/10.1177/0044118X950270010

Talwar, S., Wiek, A. & Robinson, J. (2011). User Engagement in Sustainability Research. Science and Public Policy, 38(5), 379–390. Online: https://doi.org/10.3152/030234211X12960315267615

Taylor, M. & Kent, M. L. (2014). Dialogic Engagement: Clarifying Foundational Concepts. Journal of Public Relations Research, 26(5), 384–398. Online: https://doi.org/10.1080/1062726X.2014.956106

Thew, H., Middlemiss, L. & Paavola, J. (2020). "Youth Is Not a Political Position": Exploring Justice Claims-Making in the UN Climate Change Negotiations. Global Environmental Change, 61, 102036. Online: https://doi.org/10.1016/j.gloenvcha.2020.102036

Timlett, R. E. & Williams, I. D. (2008). Public Participation and Recycling Performance in England: A Comparison of Tools for Behaviour Change. Resources, Conservation and Recycling, 52(4), 622–634. Online: https://doi.org/10.1016/j.resconrec.2007.08.003

Tommasetti, A., Singer, P., Troisi, O. & Maione, G. (2017). Extended Theory of Planned Behaviour (ETPB): Investigating Customers' Perception of Restaurants' Sustainability by Testing a Structural Equation Model. Sustainability, 10(7). Online: https://doi.org/10.3390/su10072580

Varney, D. (2007). Splitting the Ranks: Youth as Leaders, Laborers, and Learners in US Public Space Participation Projects. Children Youth and Environments, 17(2), 646–673. Online: http://www.jstor.org/stable/10.7721/chilyoutenvi.17.2.0646

Wallis, H. & Loy, L. S. (2021). What Drives Pro-Environmental Activism of Young People? A Survey Study on the Fridays for Future Movement. Journal of Environmental Psychology, 74. Online: https://doi.org/10.1016/j.jenvp.2021.101581

Watts, R. J. & Flanagan, C. (2007). Pushing the Envelope on Youth Civic Engagement: A Developmental and Liberation Psychology Perspective. Journal of Community Psychology, 35(6), 779–792. Online: https://doi.org/10.1002/jcop.20178

Webler, T. & Tuler, S. (2000). Fairness and Competence in Citizen Participation: Theoretical Reflections from a Case Study. Administration & Society, 32(5), 566–595. Online: https://doi.org/10.1177/00953990022019588

Westland, J. C. (2010). Lower Bounds on Sample Size in Structural Equation Modelling. Electronic Commerce Research and Applications, 9(6), 476–487. Online: https://doi.org/10.1016/j.elerap.2010.07.003

Wheeler, W. & Edlebeck, C. (2006). Leading, Learning, and Unleashing Potential: Youth Leadership and Civic Engagement. New Directions for Youth Development, (109), 89–97. Online: https://doi.org/10.1002/yd.156

Williams, I. D. & Taylor, C. (2004). Maximising Household Waste Recycling at Civic Amenity Sites in Lancashire, England. Waste Management, 24(9), 861–874. Online: https://doi.org/10.1016/j.wasman.2004.02.002

Willis, P. (2012). Engaging Communities: Ostrom's Economic Commons, Social Capital and Public Relations. Public Relations Review, 38(1), 116–122. Online: https://doi.org/10.1016/j.pubrev.2011.08.016

Yang, K. & Callahan, K. (2005). Assessing Citizen Involvement Efforts by Local Governments. Public Performance & Management Review, 29(2), 191–216. Online: 10.1080/15309576.2005.11051865

Yohalem, N. & Martin, S. (2007). Building the Evidence Base for Youth Engagement: Reflections on Youth and Democracy. Journal of Community Psychology, 35(6), 807–810. Online: https://doi.org/10.1002/jcop.20180

Zamir, E. & Sulitzeanu-Kenan, R. (2018). Explaining Self-Interested Behaviour of Public-Spirited Policy Makers. Public Administration Review, 78(4), 579–592. Online: https://doi.org/10.1111/puar.12825

Zilans, A. (2013). Assessment of Urban Development Policies in the Context of Sustainability in Latvia. WIT Transactions on Ecology and Environment, 175, 135–147. Online: https://doi.org/10.2495/ECO130121

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 139–155.

DOI: 10.53116/pgaflr.2022.2.6

Populism and Liberal Constitutionalism

A Proposal to Define the Impact of Populism on the Constitutional Framework

Boldizsár Szentgáli-Tóth*, Marco Antonio Simonelli**

* Senior Research Fellow, Centre for Social Sciences, Institute for Legal Studies, e-mail: szentgali-toth.boldizsar@tk.hu

** Post-doctoral Research Fellow, University of Barcelona, Faculty of Law, e-mail: simonellimarcoantonio@gmail.com

Abstract: Our paper focuses on the impact of populism on the functioning of constitutional democracy in Europe. To analyse such a complex issue, a survey has been elaborated, which tries to outline how the current populist tendencies influence the institutional framework of constitutional democracy and to what extent such parties aim and are able to undermine the long-term prevalence of rule of law. To achieve this goal, the survey monitors, amongst others, the use of referenda in European countries; the presence of instruments of participatory and direct democracy; which are the political programme of populist parties, and in particular what are their ambitions concerning institutional reforms; whether the status, the independence, the competence and the composition of the constitutional court and the judiciary are contested. The survey also examines whether the protection standard of the most important fundamental rights are relativized, or are intended to be relativized by the populist parties of the different countries. We approached young constitutional scholars from certain member states, at the initial stage of their academic career, and asked them to fill the survey.

Keywords: constitutional democracy, populism, populist parties, political participation, survey method

1. Introduction

This article aims to offer an overview of the overall impact of populism on the constitutional system. Relying on both analytical and empirical research, the article aims at identifying all the spheres of the national legal systems that are affected by populists' reform.

To further this ambition, it is first necessary to clarify the meaning of populism in the context of this article. In a broad sense,[1] populism is understood as an ideology that rejects the liberal interpretation of constitutionalism and rule of law (Skapska, 2018) and, instead of this, focuses on the effective promotion of the public interest, which is in principle unitary, and determined by the majority of the people.

As a constitutional project, populism can briefly be characterised as an attempt to (re)instate popular sovereignty at the centre of the political system.[2] Populist leaders are always expected to act as the executor of the majoritarian intent, and this legitimacy should prevail over any legal constraint (Blokker, 2019, pp. 541–544). As a consequence, populists generally treat law as an instrument to provide an enforceable form to the supposedly unitary will of the political community; the constitution is amended frequently, and judicial control mechanisms are weakened (Blokker, 2019, pp. 547–551).

This study does not dwell upon the exact definition of populism; rather, it simply considers populism as an alternative to liberal constitutionalism. The study's purpose is to identify the most crucial proposals attached to this concept, and to understand how and to what extent liberal constitutional theory should reflect on these challenges. In order to reach this stated aim, we decided to focus on what are those concrete constitutional measures that most frequently follow the rise of populist politics.

For this purpose, we have employed a set of 22 questions, concerning information about recent constitutional amendments, forms of popular participation, the electoral system, the form of government, instruments of militant democracy, oppositional rights, judicial independence, the status of the Constitutional Court, and the relationship between national and international law, as well as the law of the European Union. Building upon this set of questions, we built a picture of the main directions of populist discourse and policies, which may help to provide a deeper understanding of the populist impact on constitutional law.

2. The alleged centrality of popular sovereignty

2.1. The role of referendums, and other instruments of popular participation

As populists rely on popular sovereignty, they attribute, at least theoretically, greater weight to direct democracy than liberal constitutionalism (Brunkhorst, 2016). Consequently, populist parties frequently launch referenda, even on constitutional matters, and softer forms of popular participation are also seen as preferable.

The survey illustrates these trends well. If we see these attitudes towards referenda, it seems that the Hungarian and the Greek governments, which are usually considered populist, used them when their political aims were assumed to have the people's support.

[1] This study does not reflect on the discussion on the exact definition of populism; for some references from the recent literature on this issue see Rovira Kaltwasser et al., 2017; Akkerman, 2003, pp. 147–159; Albertazzi & McDonnell, 2015; Anselmi, 2018; Bang & Marsh, 2018, pp. 352–363; Brett, 2013, pp. 410–413; Inglehart & Norris, 2016; Mudde & Rovira Kaltwasser, 2017; Tormey, 2018.

[2] Paul Blokker attempted a detailed description of populism as a constitutional project (see Blokker, 2019, pp. 536–553).

In Greece, in July 2015, a referendum was held on the proposal of the left-wing populist government party, Syriza. The question was whether Greece should accept the conditions imposed by the European Commission, the European Central Bank and the European Monetary Fund on Greece's financial bail-out. The referendum was valid, as around 62 percent of the voters participated, and more than 60 percent of the valid votes rejected the proposed conditions, in alignment with the intent of the government (Aslanidis & Rovira Kaltwasser, 2016). Similarly, one year later, a referendum took place in Hungary on the migration quotas contained in an EU Council Decision,[3] which would have obliged each member state to give asylum status to a particular number of immigrants. The right-wing populist Hungarian government called for the rejection of these quotas, and the vast majority of participants agreed with this approach. However, the threshold of validity was not met, since less than half of the adult population submitted its vote. Nevertheless, in the light of the clear support expressed by most of the valid votes, the government claimed this outcome as a political success and retained its policy against migration quotas (Chronowski et al., 2019, p. 1473). These examples demonstrate that populist governments tend to invite the people to the ballot only when a confirmation of the actual governmental policies is expected from referenda.

Similarly, in Germany, there is a right-wing populist party, Alternative für Deutschland, which put forward proposals to extend the scope of direct democracy in Germany by holding national referenda and for the President of the Republic to be elected directly by the people. However, the *Grundgesetz* provides a form of decision-making in a very narrow circle[4] due to the terrible experience of direct democracy during the Nazi period. Referenda are nevertheless frequently organised in the *Länder* and in the municipalities;[5] the last example being the referendum held in Berlin on the expropriation of housing units from real estate corporations (Berry, 2021).

The direct participation of people is also furthered by other populist means. For instance, people are often involved in the constitution-making or amendment process to strengthen the legitimacy of such steps (Blokker, 2016a). In Latvia, certain constitutional amendments are subject to parliamentary approval,[6] and some of them might be subject to referendum,[7] while in Greece, if the parliament passes an amendment of the constitution then, after the next parliamentary election, the newly-formed legislative body shall also confirm the proposed amendments.[8] In this way, the people could select their representatives in the light of their attitude towards the amendment concerned. The introduction of referenda on adopted constitutional amendments and international treaties before their entry into force has been also rumoured in Greece, but these endeavours have so far remained unsuccessful (Mavrozacharakis et al., 2015).

[3] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

[4] Grundgesetz, Art. 20 and 29 (2019) (http://bit.ly/3kF6OpU).

[5] Art. 62 and 63 of the Constitution of Berlin (2016) (http://bit.ly/3ZY1uOv).

[6] Art. 77 of the Constitution of Latvia (2019) (http://bit.ly/3kvRCeu).

[7] Art. 78 and 79 of the Constitution of Latvia (2019) (http://bit.ly/3kvRCeu).

[8] Art. 110 (3) of the Constitution of Greece (2020) (www.servat.unibe.ch/icl/gr00000_.html).

The Fundamental Law of Hungary, enacted in 2011 has not extended the scope of referenda in comparison with the previous Constitution of Hungary; the rules on initiating and holding a referendum, as well as thresholds of validity and effectiveness are essentially the same.[9] Any referendum on constitutional amendments is excluded;[10] the adoption of these bills is exclusively subject to the approval of a two-thirds parliamentary majority.[11]

Softer forms of popular participation in the decision-making processes are also attractive for populists; national consultations have been in fact used in Hungary and Greece during recent years. In Greece, this appeared as an element of the constitution-making process, while in Hungary national consultations are commonly used to ask the opinion of the citizens on certain issues. These consultations are often criticised, as the questions are themselves manipulative, and they are phrased in such way as to induce the participants to agree with the view of the government (Pogány, 2013). It also generates several difficulties, in that usually only a small number of people are involved in these processes, so the outcome does not demonstrate the real approach of the whole society. Despite these concerns, national consultations are widely used to collect arguments for populist policies by their showing broad social support.

2.2. Imperative mandate

Another way to emphasise the pre-eminence of popular sovereignty is by introducing the institution of imperative mandate. This means that representatives are held directly responsible by the people for fulfilling their tasks, not only in the next election but also during their mandate. People may initiate the dismissal of their representatives, and they must be replaced with new parliamentarians. The idea behind this practice is that it would promote accountability and transparency. Even so,[12] people are often manipulated by political parties, by the media and especially by false information and radical views, spread by the social media, and therefore, people might also use this institution when it is not objectively justifiable. Due to these concerns, most democracies do not allow imperative mandates, with some constitutions explicitly prohibiting their introduction.

The idea of introducing an imperative mandate was put forward by the Syriza Government in Greece in 2013 and 2014, but it remained an isolated idea (Pappas, 2014, pp. 27–32). In Hungary, by contrast, the institution has never been considered. Conversely, Latvia provides us with an excellent example of how to balance these two countervailing interests. According to a constitutional amendment that entered into force in 2010, ten percent of the whole population may initiate a process to remove the whole legislative

[9] Art. 28/B and 28/C of the previous Constitution of Hungary (1949) (www.wipo.int/edocs/lexdocs/laws/en/hu/hu047en.pdf); Art. 8 of the Fundamental Law of Hungary (2019) (http://bit.ly/3R2XYOF).

[10] Art. 8 (3) 1 of the Fundamental Law of Hungary (2019).

[11] Art. S) of the Fundamental Law of Hungary (2019).

[12] Venice Commission study no. 288/2008 on imperative mandate (2009) (https://bit.ly/3JeypbO).

assembly.[13] Next, a consultation must be held and, if the majority expresses no confidence in the Parliament, and their number is at least equal to two-thirds of the number of votes submitted at the last parliamentary election, a new legislative election shall take place at least one, and at most two months after the revocation referendum. Individual deputies, however, cannot be removed separately.

All in all, imperative mandate is a doubtful constitutional instrument, which could easily destabilise the political system if it does not function properly. Nevertheless, it is at least clear that imperative mandate provides a potentially effective means of handing active control over public life to the people. As such, it may be useful to reflect on alternatives to ensure that MPs meet the expectations of their electors. A valuable solution is offered by the Spanish system, where all the major parties sitting in the parliament have signed an agreement against floor-crossing (Política Territorial 2020), thus enhancing the accountability of individual MPs towards their electors, without hindering their freedom and autonomy.

2.3. The restructuration of the legislation, and a reduced number of parliamentarians

The third direction of populist discourse on the expression of popular sovereignty is linked to the structure of the legislative body. Usually, the internal organisation of the parliament and the number of deputies are the issues that have paramount importance in this regard.

First, in Hungary and Greece, there has been extensive, but mostly academic, discussion of establishing a second chamber, which may strengthen historical ties, and might also strengthen those actors who would be keen on populist ideas (Pappas, 2014, pp. 27–32; Dezső, 2011). Since these proposals have not been transposed into the constitution, this issue has only a secondary significance from a populist perspective.

Regarding the number of deputies, it is an attractive measure in the eye of populist leaders to reduce the number of politicians, be they municipal representatives or parliamentarians. This step is always very popular, as it is depicted as anti-elitist, capable of guaranteeing a reduction in public expenses and of promoting a more effective political arena (Szentgáli-Tóth, 2014; Bakos et al., 2019). However, in reality, such a decision only affects the effectiveness and economic operation of the public administration to a limited extent, as the salaries of politicians constitute only a minor item in the budget. Even so, a reduction would bring remarkable political benefit for those parties that initiated it, and it also serves majoritarianism, which is also a key element of populism and which will be assessed more thoroughly in the next section. If there are fewer seats in the parliament, the role of smaller political groups with parliamentary representation would be significantly curtailed, as political life will be organised around two or three main centres of power (Norris, 1997).

[13] Amendment of the Constitution of Latvia enacted on 14 June 2009, entered into force on 2 November 2010.

The best example of this tendency is Hungary, where the number of parliamentarians has been reduced from 386 to 199 and, in parallel with this, the electoral system has been also reconsidered, from a mostly proportional system to a primarily majoritarian framework (Mécs, 2017). Simultaneously with the enactment of the Fundamental Law and the new act on Parliamentary elections,[14] the system of municipal elections was also renewed in Hungary.[15] The number of local councillors have been reduced by more than 50 percent, and the majoritarian character of the electoral system principle has been strengthened. A similar reform has been approved in Italy, where the two chambers of the Parliament will lose roughly a third of their members in the next legislature, as a result of constitutional reform pushed by the populist 5 Stars Movement, and subsequently confirmed in a referendum. In Germany, the idea to limit the number of deputies in the Bundestag has been already discussed, and similar proposals have also been published in Greece, but they have not received wide support from participants in the political sphere.

2.4. Majoritarianism

Majoritarianism is a core element of the populist concept, which is clearly linked to the argumentation based on popular sovereignty. In a nutshell, majoritarianism means that the view shared by the majority of the population shall be given pre-eminence; as a consequence, the protection of political minorities has only a limited space in this logic (Urbinati, 2017).

The amendment of the electoral system is used for strengthening the majoritarian decision-making mechanisms in the legislation. There are two ways in which this goal is promoted: the electoral system shall mainly be based on the majoritarian principle and, with fewer available seats, smaller political parties' room to manoeuvre is further limited.

As regards the first instrument, the Hungarian electoral system was shifted from a mostly proportional framework to an inherently majoritarian one. Before 2014, around 46 percent of the deputies were selected on a majoritarian basis from individual districts, after which, their proportion increased to around 55 percent (Mécs, 2017). Second, simultaneously with this, the number of the distributed mandates has been reduced; therefore, weaker political groupings have remarkably less chance of obtaining parliamentary mandates. There are also several smaller details during the electoral process (stricter requirements for presenting lists of candidates, additional mandates for the winner [which is also used in Greece]) which also serves the purpose of centralising the political arena in the hands of the strongest.[16] In Cyprus, a more majoritarian system has been considered several times instead of the current proportional one, but this has been rejected in each case.[17]

[14] Act CCIII of 2011 in Hungary on the elections of Members of Parliament (2012) (https://bit.ly/3kK9136).
[15] Act L of 2010 in Hungary on municipal elections (2010) (http://njt.hu/cgi_bin/njt_doc.cgi?docid=131705.283319).
[16] Greek conservatives (2019) (http://bit.ly/3WBxWDB).
[17] Republic of Cyprus Parliamentary elections (2016) (www.osce.org/files/f/documents/2/b/230496.pdf).

In Greece, almost every government has amended the electoral system: the Syriza Government moved it in a proportional direction, while the New Democracy Government changed the framework back to a mostly majoritarian system by providing additional mandates for the election's winner. Amendments to electoral laws are also ordinary business in Italy, where in the last decade the electoral law was first amended in a majoritarian sense and then in a proportional fashion. This continuous change brings permanent uncertainty to the system, which threatens to exacerbate voters' conscious decision-making.

3. An instrumentalist approach to the law

3.1. Constitutional amendments

In compliance with their emphasis on the respect of the majoritarian will, populists do not consider the law, nor legality itself, as a supreme value: in their view, the interest of the community may overcome legal constraints if the situation so requires (Elkins et al., 2009). As a consequence, although the constitution is still formally recognised as the supreme legal source, its content is subject to continuous revisions, and transformed into an instrument of everyday politics, in order to pursue the alleged collective interest of the community (Müller, 2017). It is indeed a widespread tendency in several national constitutional systems that constitutional amendments are more frequent than earlier (Elkins et al., 2009). The primary value is not the constitution itself, but the actual content of the constitution, which shall be flexible, and shall at any time be in harmony with the feelings of the majority (Scheppele, 2018). Consequently, it is a widely accepted practice under populist regimes that when the Constitutional Court outlaws a particular statute, the constitution is amended, and then the same law is enacted with constitutional rank. Populist governments also tend to amend the constitution relatively frequently when it serves political rather than legislative necessities (Walker, 2019). The best example is the Hungarian development after 2010, when the previous Constitution was amended several times by a two-thirds governmental parliamentary majority. Moreover, simultaneously with this, a new Fundamental Law was being prepared, which functioned as a constitution (cf. The German *Grundgesetz*) but also highlighted the historical traditions of Hungary, and strengthened the protection of the national values and the Christian culture (Kovács & Tóth, 2016). The Fundamental Law has been amended eight times since its enactment in 2011, which undermined its social reception as a coherent and permanent framework (Sonnevend et al., 2015). Moreover, transitional measures concerning the entry into effect of the Fundamental Law were adopted, but some of these were subsequently repealed by the Constitutional Court since, despite their *interim* character, they substantively and permanently overruled the main text of the Fundamental Law itself.[18] What is more, the Fundamental Law expresses as a duty

[18] 45/2012 (XII.29.) ruling of the Constitutional Court of Hungary, ABH 2012, 346.

for everyone, and in particular the Constitutional Court, to interpret its provisions in the light of their purposes, of the National Avowal, and of the achievements of the historical constitution.[19] The enumeration of these points of reference as secondary legal sources would increase the uncertainty about the borders and the real content of the constitution even further (Kovács & Tóth, 2016).

One may argue that the presence of populist ideas may enhance the possibility of frequent constitutional amendments, but the real extent depends mostly on the procedural flexibility of the constitutional framework. A good case in point is Germany, which, notwithstanding the presence of populist parties in parliament, is minoritarian: eleven constitutional amendments were approved over the last decade.[20] A similar situation is observable in both Hungary and Cyprus where, as in Germany, a two-third legislative majority is sufficient for amending the constitution. By contrast where, the constitutional revision process became being stricter, like in Greece, the presence of populist parties in government has a smaller impact on the frequency of constitutional amendments.

4. Reforming the Constitutional Court and constitutional adjudication

According to populist ideology, the expression of the democratic will of the majority is the primary orientation for decision-makers; legal considerations could restrict this logic only exceptionally, in the event of serious violations of procedural requirements, fundamental principles or substantial limits (Lacey, 2019). Consequently, the role of judicial review should be marginal.

Hence, the autonomy and powers of constitutional courts become targets of populist endeavours. Hungary and Poland have provided the best examples of intense discussion about the role of the Constitutional Court: in this study, however, we will focus only on the Hungarian Constitutional Court.

The populist attitude towards the Constitutional Court mostly respects the formal framework of the body, and its status, including the safeguards of its autonomy; however, the composition and the competences of the Constitutional Court are often under

[19] Art. R (3) of the Fundamental Law of Hungary (2011) (https://mkogy.jogtar.hu/jogszabaly?docid=a1100425.ATV).

[20] 19 March 2009: Art. 106, 106b (new), 107, 108 GG, road traffic taxation; 17 July 2009: Art. 45d GG, implementing parliamentary control committee concerning the Federal Intelligence Service; 29 July 2009: Art. 87d GG, aviation administration system changed; no monopoly for national providers anymore; air traffic control also by – within the EU – authorized providers; 29 July 2009: Article 91c, 91d, 104b, 109a, 143d (new), 104b, 109, 115 GG, deeper integration between states and federation; 21 July 2010: Art. 91e GG, deeper integration between states and federation concerning better support for the unemployed; 11 July 2012: Art. 93 para. 1 nr. 4c GG, implementing a constitutional legal proceeding for parties, which were denied to take part in the national election; 23 December 2014: Art. 91b GG, deeper integration between states and federation concerning funding of science and research; 13 July 2017: Art. 21 GG, political parties that are fighting against the main values of the Grungiest are excluded from federal party financing; 13 July 2017: 104c, 143e, 143f, 143g (new); Art. 90, 91c, 104b, 107, 108, 109a, 114, 125c, 143d GG, federal financial support for the states; 28 March 2019: 104d (new), Art. 104b, 104c, 125c, 143e GG, federal financial support for the states; 15 November 2019: Art. 72, 105, 125b GG, implementing a legislative competence of the Federation concerning property taxes.

pressure (Corrias, 2016). As regards the composition, there are two ways to influence the membership of the body. The first is to pack the Constitutional Court with government-friendly judges (Fournier, 2019); in this case, the new members are elected by the governmental side, and probably these people will be most loyal to those from whom they received their mandate (Fleck et al., 2011, pp. 4–7). The second way is to change the selection rules and give the populist government sole authority to appoint new judges. The usual target is to appoint judges by a simple majority instead of qualified majority and, with this method, the inherent attitude of the whole body will be changed after some years.

As far as the competences are concerned, there are again two main instruments to neutralise the counterbalancing role of the Constitutional Court. First, the rules on standing before the Constitutional Court can be amended in such a way that fewer cases are heard by the Constitutional Court, especially with less political weight. The best example in this regard is the adoption of the Hungarian Fundamental Law, which significantly amended the powers of the Hungarian Constitutional Court (Stumpf, 2017). The *ex-post* constitutional review initiated by *actio popularis,* i.e. by any citizen, has been substituted with a direct individual appeal, which can be submitted only by a natural or legal person claiming a violation of its fundamental rights (Szente, 2015). More worryingly, Constitutional Court rulings based on the previous Constitution of Hungary have been repealed, which is not so understandable, since Constitutional Court decisions do not have any legal effect.[21] Consequently, instead of systematic discrepancies, the Hungarian Constitutional Court focuses mostly on individual concerns, which have beyond doubt paramount importance for the persons involved, but not from the perspective of the whole constitutional system (Chronowski et al., 2019, p. 1459).

Second, material limitations on the matters that can be subjected to the Constitutional Court judicial review are introduced. The Fundamental Law remarkably narrowed the margin of appreciation of the Constitutional Court on economic matters, providing that if the government debt exceeds half of the total gross domestic product, the Constitutional Court may review budgetary acts for conformity with the Fundamental Law "exclusively in connection with the rights to life and human dignity, to the protection of personal data, to freedom of thought, conscience and religion, or the rights related to Hungarian citizenship, and it may annul these Acts only for the violation of these rights".[22]

In addition to these approaches, the general attitude of populist leaders towards constitutional courts should be taken into account: these politicians tend to overrule decisions not in their favour by amending the constitution, as we have already noted earlier.

[21] Fourth Amendment of the Fundamental Law of Hungary, Art. 19 (2) (2013) (https://mkogy.jogtar.hu/jogszabaly?docid=a1300325.ATV).

[22] The Fundamental Law of Hungary, Art. 37 (4) (2011).

5. Attempts to undermine the independence of the judiciary

Populist regimes also attempt to reorganise the judicial system, and it is regularly interpreted as efforts to undermine the independence of the courts. Again, two main measures can be identified through which populist politicians may extend their influence. Sometimes, an establishment of separate administrative tribunals is envisaged, and this could weaken the traditionally elaborated independence of the judiciary.[23]However, a more meaningful direction is to extend the powers of the executive *vis à vis* the judiciary, as regards the appointment of judges, the internal administration and the budget of the courts. In parallel with this, the powers of judicial self-government bodies are put under pressure (Waldron, 2006). Such steps have been taken in many European States, especially in Greece, Hungary, Poland and Spain (Kazai, 2019) and their evaluation is very mixed. The supporters of these reforms call for a more efficient and faster judicial review, while their opponents treat these steps as serious attacks on judicial integrity. The issue is quite difficult, as even the Venice Commission acknowledged that the same model with the same involvement of the executive might be problematic or even acceptable, depending on the social, political and legal context.[24]

6. The relationship of national law with international law, and with the law of the European Union

Finally, some words should be directed to the populist consideration of the role of international and European Union law. According to populist rhetoric, national sovereignty shall have priority over these aspects (Chronowski, 2012) but usually, populists do not intend to amend the legal regulations concerning the relationship between national and European Union law.

Instead of this, constitutional courts in populist-ruled countries have become champions of the defence of the national constitutional framework and national identity against the attempts at enforced integration (Rodrik, 2018). An attempt to present the national constitution, or at least some part of it, as superior to EU law has been made by several European courts, above all by the constitutional courts of Germany, Italy and Spain. While these courts merely seek to enhance the level of protection of fundamental rights at the EU level, the Hungarian and Polish constitutional courts put in place a fully-fledged confrontation with the EU. These constitutional courts clearly asserted their competence to review an EU act against the national constitution, and eventually declare its unconstitutionality (Blokker, 2016b). Consequently, in the debate between the Court of Justice of the European Union ('the ECJ') and the national constitutional courts,

[23] 8th amendment of the Constitution of Cyprus (Law 130(I)/2015) on the establishment of a new first instance administrative court.

[24] Venice Commission, opinion no. 943/2018. on the administrative justice reform of Hungary, par. 27–29 (2019) (https://bit.ly/3XS4eeh).

populists give priority to the national constitutions, and sometimes outlaw some elements of European Union law.[25] Those constitutional courts, which have members with some populist background, as they have been thus packed by their respective governments, share this approach. From the near past, a case might be highlighted here. The Hungarian Constitutional Court has elaborated a detailed concept of constitutional identity, which has been added explicitly to the constitutional framework by the seventh amendment of the Fundamental Law of Hungary.[26] This amendment also stipulated that:

> [b]ased on an international treaty, Hungary may exercise its certain powers jointly with the other Member States via the institutions of the European Union to the extent necessary for the exercise of its rights deriving from the founding treaties and for the performance of its obligations in order to take part in the European Union as a Member State. The exercise of its powers pursuant to this Section shall be consistent with the fundamental rights and freedoms laid down in the Fundamental Law, and shall not limit Hungary's inalienable right of disposal related to its territorial integrity, population, form of government and governmental organisation.[27]

This approach properly embodies the populist vision in this regard, claiming that certain core elements of the national constitutional identity shall impose substantial limitations on the margin of movement of the European Union.

7. Conclusions

In this contribution, we envisaged a new methodology to analyse the impact of populism on the constitutional framework, and selected some European countries to demonstrate how this research could be completed in a broader sense, across the European Union, or even across the whole European continent. Populism is currently considered the most important challenge to liberal constitutionalism, and is the consequence of numerous social and economic factors, and the various failures of liberal democracies. The link between populism and constitutional law has been evaluated by many scholars; nevertheless, a well-elaborated system with the aim of completeness has not been provided. Our aim with this research was to suggest a complementary method of research, including empirical research based on a uniform set of questions. This kind of comparative approach to populist constitutional ideas mean the main innovation of our academic piece is to seek a deeper understanding of the populist view of

[25] As an example please see The Sound of Economics (2020).

[26] "We hold that it is a fundamental obligation of the state to protect our self-identity rooted in our historical constitution." (The Fundamental Law of Hungary, National Avowal, 25.04.2011.)

[27] Seventh Amendment of the Fundamental Law of Hungary, Art. 2 (2018) (https://mkogy.jogtar.hu/jogszabaly?docid=A1800628.ATV).

constitutionalism, which could help to reconsider which elements of liberal constitutionalism may need to be reshaped. In our view, populism is supported by wide social layers due to its successes, mostly in the economic field (Burai et al., 2017, p. 9), and liberal democracy would be again the primary choice if it could articulate such mechanisms within its traditional standards, which could provide the same sense of comfort for the citizens (Ginsburg et al., 2018). A well-founded analysis of populism could serve this necessary reform process of liberal democracy, as the most urgent demands might be identified more easily. In this way, comparative research would not only have academic and theoretical significance, but would also show those fields of constitutional life, where populism has put forward alternatives, and where liberal constitutionalism needs to be reconsidered if it is to retain its former positions. Our contribution could, we hope, be a modest contribution to these crucial endeavours.

Annex. Text of the questions

Survey evaluating the impact of populism on constitutional and representative democracy

1. What kind of constitutional changes have taken place in the last ten years in your country? Please specify the date and content of constitutional amendments. (Please specify all constitution-making acts in the past ten years in your country. If there were any changes in the constitutional text, please briefly describe their topics and motives.)
2. Is there a prohibition of imperative mandate in your national constitution?
   2a. If yes, is there any formalised or unformalised proposal to amend the constitution as to remove the prohibition or introduce the possibility of 'recall'?
3. Is there in your country the possibility to hold a referendum to propose a bill? (Please specify the source of law.)
   3a. If no, is there any formalised or unformalised proposal to amend legislation to introduce this possibility?
4. Is there in your country the possibility to hold an abrogative referendum? (Please specify the source of law.)
   4a. If no, is there any formalised or unformalised proposal to amend legislation to introduce this possibility?
5. Is there in your country the possibility to hold a consultative referendum? (Please specify the source of law.)
   5a. If no, is there any formalised or unformalised proposal to amend legislation to introduce this possibility?
6. Does your national constitution provide for mandatory participation of the people in the constitutional amending process? (If yes specify the form.)
   6a. Is there any formalised or unformalised proposal aimed at enhancing the role of the people in the constitutional-amending process?
   6b. If yes, through which instruments (e.g. ex-ante referendum, direct involvement in the revision process, ex-post referendum).

7. On what matters have national referendums been held? What other forms of citizen's participation are used in your country (in practice)?
8. Is there in your country any formalised or unformalised proposal to introduce forms of participative democracy? If yes, please specify at which level (constitutional, legislative, regulatory act).
9. Is there in your country any formalised or unformalised proposal to amend the constitution to reduce the number of MPs?
10. Is there in your country any formalised or unformalised proposal to switch to a mono-cameral system or vice versa?
11. Have there been, in the last ten years, any changes in electoral laws? (In replying to this question, the practice of changing electoral boundaries, campaign financing rules, and the rules guiding political advertisements might be particularly important.)
11. Which kind of electoral system your country has?
    11a. Is there any formalised or unformalised proposal to change it in a more proportional one?
    11b. Is there any formalised or unformalised proposal to introduce a majority bonus system?
12. Does the voter, in your country, have the possibility to express his/her individual preference in national elections?
12a. If not, is there any formalised or unformalised proposal to introduce such a possibility?
13. Which form of government does your country have?
    13a. Is there any formalised or unformalised proposal to change the rules for electing the heads of the government and of State?
14. Is there a limit of presidential mandates in your national constitution?
    14a. If yes, is there any formalised or unformalised proposal to amend the constitution as to remove the limitation?
15. Is there in your country any formalised or unformalised proposal to reduce the rights of the opposition (e.g. abolition of qualified majority voting for certain acts; enhancement of thresholds for triggering ex-ante judicial review of legislation; initiative aimed at reducing parliamentary discussions)?
16. Is there in your country any instrument of 'militant democracy' (e.g. possibility for constitutional courts to outlaw political parties, norms declaring illegal extremist ideas)?
    16a. Is there any formalised or unformalised proposal to introduce such instruments?
    16b. Is there any formalised or unformalised proposal to abolish such instruments?
17. How constitutional judges are appointed in your country?
    17a. Is there any formalised or unformalised proposal to amend the composition and powers of constitutional courts?
18. What is the composition of your national council of judiciary?
    18a. Is there any formalised or unformalised proposal to amend its composition and powers?

19. How the members of the main independent authorities (e.g. central banks, telecommunications regulatory bodies) are appointed?
    19a. Is there any formalised or unformalised proposal to modify the rules of appointments?
20. Is there in your country a norm on the relationship between national and EU law? (Please specify the source of law.)
    20a. If yes, is there any formalised or unformalised proposal aimed at reaffirming the primacy of national law (in particular constitution) above EU law?
21. What is the procedure for the ratification of international treaties in your country?
    21a. Is there any formalised or unformalised proposal to introduce a mandatory referendum for the ratification of international treaties?
22. Is there any formalised or unformalised initiative to hold a referendum about the continuance of your country's membership of the EU?
    22a. Is such a proposal present in the programme of parties?

References

Akkerman, T. (2003). Populism and Democracy: Challenge or Pathology? Acta Politica, 38(2), 147–159. Online: https://doi.org/10.1057/palgrave.ap.5500021

Albertazzi, D. & McDonnell, D. (2015). Populists in Power. Routledge. Online: https://doi.org/10.4324/9781315725789

Anselmi, M. (2018). Populism: An Introduction. Routledge.

Aslanidis, P. & Rovira Kaltwasser, C. (2016). Dealing with Populists in Government: the SYRIZA-ANEL Coalition in Greece. Democratization, 23(6), 1077–1091. Online: https://doi.org/10.1080/13510347.2016.1154842

Bakos, B., Bukor, L., Grósz, L. & Kührner, L. (2019, October 9). The Municipal Election System in Hungary. Arsboni. Online: https://arsboni.hu/the-municipal-election-system-in-hungary/

Bang, H. & Marsh, D. (2018). Populism: A Major Threat to Democracy? Policy Studies, 39(3), 352–363. Online: https://doi.org/10.1080/01442872.2018.1475640

Berry, A. (2021, September 26). Germany: Berlin Locals Vote to Expropriate Housing Giants. DW. Online: http://bit.ly/4014jOY

Blokker, P. (2016a). Constitutional Reform in Europe and Recourse to the People. In X. Contiades & A. Fotiadou (Eds.), Participatory Constitutional Change. The People as Amenders of the Constitution (pp. 31–51). Routledge.

Blokker, P. (2016b). EU Democratic Oversight and Domestic Deviation from the Rule of Law: Sociological Reflections. In C. Closa & D. Kochenov (Eds.), Reinforcing Rule of Law Oversight in the European Union (pp. 249–269). Cambridge University Press. Online: http://doi.org/10.1017/CBO9781316258774.014

Blokker, P. (2017). The Imaginary Constitution of Constitutions. Social Imaginaries, 3(1), 167–193. Online: https://doi.org/10.5840/si2017318

Blokker, P. (2019). Populism as a Constitutional Project. International Journal of Constitutional Law, 17(2), 536–553. Online: https://doi.org/10.1093/icon/moz028

Brett, W. (2013). What's an Elite to Do? The Threat of Populism from Left, Right and Centre. The Political Quarterly, 84(3), 410–413. Online: https://doi.org/10.1111/j.1467-923X.2013.12030.x

Brunkhorst, H. (2016). Constituent Power and Constitutionalization in Europe. International Journal of Constitutional Law, 14(3), 680–696. Online: https://doi.org/10.1093/icon/mow045

Burai, P., Ligeti, M., Martin, J. P. & Salgó, E. (2017). Democratic Backsliding and Economic Performance. Building Unity and Support for Democratic and Free Market Values in Central and Eastern Europe. Country report on Hungary. Transparency International Hungary.

Chronowski, N. (2012). The New Hungarian Fundamental Law in the Light of the European Union's Normative Values. Revue Est Europa, 1, 111–142.

Chronowski, N., Varju, M., Bárd, P. & Sulyok, G. (2019). Hungary: Constitutional (R)evolution or Regression? In A. Albi & S. Bardutzky (Eds.), National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law (pp. 1439–1488). Springer. Online: https://doi.org/10.1007/978-94-6265-273-6_31

Corrias, L. (2016). Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity. European Constitutional Law Review, 12(1), 6–26. Online: http://doi.org/10.1017/S1574019616000031

Dezső, M. (2011). A második kamarák alkotmányos funkciói. In A. Téglási (Ed.), Szükség van-e kétkamarás parlamentre az új Alkotmányban? (pp. 56–62). Országgyűlés Alkotmányügyi, igazságügyi és ügyrendi bizottsága.

Elkins, Z., Ginsburg, T. & Melton, J. (2009). Identifying Risks to Constitutional Life. In Z. Elkins, T. Ginsburg & J. Melton (Eds.), The Endurance of National Constitutions (pp. 6–30). Cambridge University Press. Online: https://doi.org/10.1017/CBO9780511817595.006

Fleck, Z., Gadó, G., Halmai, G., Hegyi, Sz., Juhász, G., Kis, J., Körtvélyesi, Zs., Majtényi, B. & Tóth, G. A. (2011). Opinion on the Fundamental Law of Hungary. Online: http://lapa.princeton.edu/hosteddocs/amicus-to-vc-english-final.pdf

Fournier, T. (2019). From Rhetoric to Action, a Constitutional Analysis of Populism. German Law Journal, 20(3), 362–381. Online: http://doi.org/10.1017/glj.2019.22

Gidron, N. & Bonikowski, B. (2013). Varieties of Populism: Literature Review and Research Agenda. Harvard Working Paper Series, 13004. Online: https://bit.ly/3JbpTtY

Ginsburg, T., Huq, A. Z. & Versteeg, M. (2018). The Coming Demise of Liberal Constitutionalism. University of Chicago Law Review, 85(2), 239–255. Online: https://bit.ly/3XShAra

Ginsburg, T., Melton, J. & Elkins, Z. (2011). On the Evasion of Executive Term Limits. William & Mary Law Review, 52(6), 1807–1872. Online: https://bit.ly/3RfDxOV

Inglehart, R. & Norris, P. (2016). Trump, Brexit, and the Rise of Populism: Economic Have-Nots and Cultural Backlash. Harvard Kennedy School Faculty Research Working Paper Series, RWP16-026. Online: https://doi.org/10.2139/ssrn.2818659

Invernizzi Accetti, C. & Zuckermann, I. (2017). What's Wrong with Militant Democracy? Political Studies, 65(1_suppl), 182–199. https://doi.org/10.1177/0032321715614849

Kazai, Z. V. (2019, May 1). Administrative Judicial Reform in Hungary: Who Gives a Fig about Parliamentary Process? Verfassungsblog on Matters Constitutional. Online: http://bit.ly/3Hu5q2q

Kombos, C. & Laulhé Shaelou, S. (2019). The Cypriot Constitution Under the Impact of EU Law: An Asymmetrical Formation. In A. Albi & S. Bardutzky (Eds.), National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law (pp. 1373–1432). T.M.C. Asser Press. Online: https://doi.org/10.1007/978-94-6265-273-6_29

Kovács, K. & Tóth, G. A. (2016). Hungary's Constitutional Transformation. European Constitutional Law Review, 7(2), 183–203. Online: http://doi.org/10.1017/S1574019611200038

Lacey, N. (2019). Populism and the Rule of Law. Annual Review of Law and Social Science, 15(1), 79–96. Online: https://doi.org/10.1146/annurev-lawsocsci-101518-042919

Landau, D. (2018). Populist Constitutions. University of Chicago Law Review, 85, 521–543.

Mavrozacharakis, E., Tzagkarakis, S. & Kamekis, A. (2015, April 19). Modern Populism in Greece. From Opposition to Power. SSRN. Online: http://dx.doi.org/10.2139/ssrn.2596167

McKay, J. (1996). Berlin-Brandenburg? Nein, danke! The Referendum on the Proposed Länderfusion. German Politics, 5(3), 485–502. Online: https://doi.org/10.1080/09644009608404455

Mécs, J. (2017). Reform of the Electoral System in Canada and in Hungary – Towards a More Proportional Electoral System? ELTE Law Journal, (2), 83–101.
Mohay, G. (2008). A 2008-as népszavazás a pártstratégiák tükrében. Jogelméleti Szemle, (2).
Mudde, C. & Rovira Kaltwasser, C. (2017). Populism: A Very Short Introduction. Oxford University Press. Online: https://doi.org/10.1093/actrade/9780190234874.001.0001
Müller, W. (2017). Populism and Constitutionalism. In C. Rovira Kaltwasser, P. A. Taggart, P.O. Espejo & P. Ostiguy (Eds.), The Oxford Handbook of Populism (pp. 590–606). Oxford University Press. Online: https://doi.org/10.1093/oxfordhb/9780198803560.013.28
Müller, J-W. (2015). Should the EU Protect Democracy and the Rule of Law inside Member States? European Law Journal, 21(2), 141–160. Online: https://doi.org/10.1111/eulj.12124
Norris, P. (1997). Choosing Electoral Systems: Proportional, Majoritarian, and Mixed Systems. International Political Science Review, 18(3), 297–312. Online: https://doi.org/10.1177/0192512970018003005
Pappas, T. (2014). Populism and Crisis Politics in Greece. Palgrave Macmillan. Online: https://doi.org/10.1057/9781137410580
Pogány, I. (2013). The Crisis of Democracy in East Central Europe: The 'New Constitutionalism' in Hungary. European Public Law, 19(2), 341–367. Online: https://doi.org/10.54648/euro2013021
Política Territorial (2020, November 11). El Pacto Antitransfuguismo se refuerza y se extiende a todas las administraciones públicas. Política Territorial. Online: http://bit.ly/3HvPUmF
Rodrik, D. (2018). Populism and the Economics of Globalization. Journal of International Business Policy, 1, 12–23. Online: https://doi.org/10.1057/s42214-018-0001-4
Rooduijn, M. (2018). State of the Field: How to Study Populism and Adjacent Topics? A Plea for Both More and Less Focus. European Journal of Political Research, 58(1), 362–372. Online: https://doi.org/10.1111/1475-6765.12314
Rovira Kaltwasser, C., Taggart, P. A., Espejo, P. O. & Ostiguy, P. (Eds.) (2017). The Oxford Handbook of Populism. Oxford University Press. Online: https://doi.org/10.1093/oxfordhb/9780198803560.001.0001
Scheppele, K. L. (2018). Autocratic Legalism. The University of Chicago Law Review, 85(2), 545–583.
Skapska, G. (2018). The Decline of Liberal Constitutionalism in East Central Europe. In P. Vihalemm, A. Masso & S. Opermann (Eds.), The Routledge Handbook of European Social Transformations (pp. 130–146). Routledge. Online: http://doi.org/10.4324/9781315612942-9
Sonnevend, P., Jakab, A. & Csink, L. (2015). The Constitution as an Instrument of Everyday Party Politics: The Basic Law of Hungary. In A. von Bogdandy & P. Sonnevend (Eds.), Constitutional Crisis in the European Constitutional Area (pp. 33–109). Hart Publishing. Online: https://doi.org/10.5771/9783845261386-46
Stumpf, I. (2017). The Hungarian Constitutional Court's Place in the Constitutional System of Hungary. Polgári Szemle, 13(Special Issue), 239–258. Online: http://doi.org/10.24307/psz.2017.0314
Szente, Z. (2015). The Decline of Constitutional Review in Hungary – Towards a Partisan Constitutional Court? In Z. Szente, F. Mandák & Zs. Fejes (Eds.), Challenges and Pitfalls in the Recent Hungarian Constitutional Development (pp. 185–210). L'Harmattan.
Szentgáli-Tóth, B. (2014, September 12). Mi és miért változott? Az új önkormányzati választási rendszer háttere. Arsboni. Online: http://bit.ly/3RbeEDN
Szentgáli-Tóth, B. (2015, July 16). Some Points against Legislating with Two-Thirds Majority. Lawyr.it. Online: http://bit.ly/3XA8krU
Szentgáli-Tóth, B. (2018a). Hogyan tovább, kétharmad? A minősített többségű törvényalkotás múltja, jelene, jövője Magyarországon. HVG Orac Könyvkiadó.
Szentgáli-Tóth, B. (2018b). A minősített törvények mint az alapvető jogok védelmének eszközei Közép- és Kelet-Európában. Magyar Jog, (3), 155–161.
Szentgáli-Tóth, B. (2018c). Puede la mayoría cualificada socavar la democracia? El caso de Hungría. Teoria y realidad constitucional, 41, 419–431. Online: https://doi.org/10.5944/trc.41.2018.22131

Tamanaha, B. Z. (2006). The Tensions Between Legal Instrumentalism and the Rule of Law. UC Berkeley.
The Sound of Economics (2020, May 4): An Analysis of the German Constitutional Court's Ruling on the ECB QE Programme. The Sound of Economics. Online: http://bit.ly/3kzNREV
Tormey, S. (2018). Populism: Democracy's Pharmakon? Policy Studies, 39(3), 260–273. Online: https://doi.org/10.1080/01442872.2018.1475638
Urbinati, N. (2017). Populism and the Principle of Majority. In C. Rovira Kaltwasser, P. A. Taggart, P.O. Espejo & P. Ostiguy (Eds.), The Oxford Handbook of Populism (pp. 571–587). Oxford University Press. Online: https://doi.org/10.1093/oxfordhb/9780198803560.013.31
Versteeg, M., Horley, T., Meng, A., Guim, M. & Guirguis, M. (2020). The Law and Politics of Presidential Term Limit Evasion. Columbia Law Review, 120(1), 173–248. Online: www.jstor.org/stable/26868346
Waldron, J. (2006). The Core of the Case against Judicial Review. The Yale Law Journal, 115(6), 1346–1406. Online: https://doi.org/10.2307/20455656
Walker, N. (2019). Populism and Constitutional Tensions. International Journal of Constitutional Law, 17(2), 515–535. Online: https://doi.org/10.1093/icon/moz027
Zakaria, F. (1997). The Rise of Illiberal Democracy. Foreign Affars, 76(6), 22–43. Online: https://doi.org/10.2307/20048274

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 157–172.

DOI: 10.53116/pgaflr.2022.2.7

The Impact of the Covid-19 Pandemic on Constitutionalism and the State of Emergency

Blerton Sinani*

* Associate Professor, South East European University, Faculty of Law, e-mail: blerton.sinani@seeu.edu.mk

Abstract: The emanation of the Covid-19 global pandemic has managed to influence specific legal, political and socio-economic aspects. Public health, public institutions, as well as concepts such as: the rule of law, restriction of certain human rights and socio-economic wellbeing became characteristics of the global pandemic and as such triggered a state of emergency. The pandemic cannot be a justified pretext for an unlimited suspension of democracy. Indeed, restrictions on civil rights and liberties ought to be interim, proportional and transparent. Although the emergency measures taken by governments against the Covid-19 should be provisional, time-bound and in congruence with democracy as any contemporary political regime or state governed by the rule of law. This situation once again revealed to us the importance of a constitutional state of emergency guided by public law in its forms and examples of comparative constitutional law regarding events which in 2020 demanded the emergence and function of public institutions in an effort to protect society. The state of emergency is regulated by the Constitution of the Republic of North Macedonia of 1991 in general which gives the government expansive power, such as bypassing the parliament's power through issuing acts by force of law. It is worth mentioning that in North Macedonia there is no lex specialis or special legislative act that regulates a state of emergency.

Keywords: constitution, state of emergency, Covid-19, democracy, rule of law, human rights

1. Some general considerations in relation to constitutionalism under extreme conditions

Constitutions are often made, broken, or changed under extreme conditions such as war, secession, emergency or some other extraordinary circumstance. Over the past 40 years alone more than 200 constitutions have been introduced in this way. As Peter Russell (2004, p. 106) notes: "No liberal democratic state has accomplished comprehensive constitutional change outside the context of some cataclysmic situation such as revolution, world war, the withdrawal of empire, civil war, or the threat of imminent breakup." Constitutionalism under extreme conditions raises a bundle of fascinating and important issues. Constitutionalism is nowadays commonly identified by a certain condition such as the recognition of the people as the source of all governmental authority,

the normative supremacy of the constitution, the ways the constitution regulates and limits governmental power, adherence to the rule of law and respect for fundamental rights. Constitutions are intended to be stable and to survive during times of crisis. They are therefore sometimes designed expressly to accommodate unforeseen circumstances and to authorise resort to emergency powers. These unforeseen circumstances – for instance belligerency, war, terror and alike; natural and manmade disasters; political and economic meltdowns, and the emergency regimes created to manage these situations – pose a serious challenge to each of the components of constitutionalism. In a constitutional regime, there is a normative supremacy of the constitution, the source of which is "the people". However, states of exception and emergency powers go to the very root of the constitutional order, to the question of sovereignty and its exercise. As Carl Schmitt famously stated in his book *Political Theology* the sovereign is "he who decides on the state of exception". According to the classical institution of the Roman dictatorship in times of crisis, an eminent citizen was called by the ordinary officials and temporarily granted absolute powers and in some cases to create a temporary "constitutional dictatorship" as the regime seeks to restore the *status quo ante* emergency. These regimes undermine limits to governmental powers as they give enhanced powers, usually to the executive, allowing it to overcome legal restrictions in order to efficiently face the crisis. Emergency regimes have implications for the rule of law. The rule of law comprises two layers: formal and substantive. Briefly put, the formal aspect of the rule of law requires prohibitions and delegations to be explicitly anchored in the law, which is promulgated, prospective, general, stable, clear and enforced equally. The substantive aspect of the rule of law requires prohibitions and delegations to respect various content-based values, such as individual rights or the separation of powers. In times of crisis both values are at risk (Albert & Roznai, 2020, p. 2).

Needless to say, emergencies are not an everyday issue. Otherwise, they would become normal which alludes to periods where the everyday functioning of institutions is deemed sufficient for solving pressing problems. Therefore, "emergencies" is a broader term than those of "state of emergency" or "state of exception", which invokes a situation in which the very existence of a state is at stake. Nevertheless, "emergency" can be defined as an extraordinary situation requiring prompt and firm action; therefore, emergency powers are conferred to the executive, while the role of parliament as well as the protection of some key fundamental rights and freedoms are compressed; the emergency finished, the normal functioning of the form of government is restored. In addition, "the key elements of traditional emergencies are mainly two: a temporary prominent role of the executive power over the legislative and measures that temporary infringe or suspend rights and freedoms; therefore, temporariness is the core word, since the emergency character of the situation requires a deviation from the constitutional legal order; moreover, since the ultimate aim is the restoration of the constitutional legal order, the deviation cannot be temporary" (Albert & Roznai, 2020, p. 168, 219).

As to the constitutional emergency powers undertaken by the executive under such extreme conditions the following three main models–archetypes for constitutional emergencies are identified as:

- The "rule of law", or "business as usual" archetype model, according to which responses to emergencies can be framed within the existing, ordinary legal framework. Here, no extraordinary measures in the strongest sense of the term are adopted, since they are provided for in a predetermined framework also available during times of normalcy. In this archetype model the label "emergency" is more of a discursive or communicative tool as it does not lead to an upheaval of existing legal structures.
- The "constitutional dictatorship" archetype model in which emergencies lead to exceptional and temporary regimes wherein ordinary norms no longer apply. Emergency measures also take place within a predetermined normative space, albeit one of a temporary nature and which is not available in periods of normalcy. Moreover, there are substantive and procedural requirements in place, since they are seen as reducing the likelihood of abuse.
- The "extralegal archetype model" in which responses to emergencies are to be found outside of established norms, perhaps best illustrated by the adage "necessity knows no law".

Accordingly, emergencies are mostly or completely unregulated in light of the impossibility by lawmakers to foresee all possible extraordinary scenarios. It should be noted that the three archetype models mentioned above are not always apt at accurately describing the constitutional regimes in specific legal systems. Thus, they should not be applied in an either/or fashion to label every particular instance. In some cases emergencies may lead to a combination of elements from more than one of the archetype models (Albert & Roznai, 2020, p. 2). In fact, two types of emergency powers exist: constitutional and extra-constitutional. In the first case emergency powers are based upon the (written) constitution or on an organic or ordinary law enacted in accordance with the constitution; the state officially proclaims a state of emergency (in one of the forms foreseen by national law) and, usually, enacts emergency measures. In the latter case, executive authorities act – and are considered to be entitled to act – in an emergency on the basis of unwritten (constitutional) principles in order to overcome the emergency; the state enacts emergency measures without officially proclaiming a state of emergency. The first form of state of emergency may be considered a *de iure* one, the second a *de facto* one. The latter form does not necessarily constitute a violation of international law. The absence of a formal declaration may however preclude states from resorting to certain measures [e.g. under the ICCPR (International Covenant on Civil and Political Rights), a derogation from human rights can only take place "in time of public emergency the existence of which is officially proclaimed", Article 4(1)]. A system of *de iure* constitutional emergency powers can provide better guarantees for fundamental rights, democracy and the rule of law, and better serve the principle of legal certainty, deriving therefrom. In its 1995 Report on Emergency Powers, the Venice Commission expressed a preference for the *de iure* form, recommending that "*de facto* state of emergency should be avoided, and emergency rule should be officially declared". The declaration of a state of emergency is subject to the rules enshrined in the domestic legal order (Alivizatos et al., 2020, pp. 6–7). The rules must be clear, accessible and

prospective (available in advance). Within the system of written emergency powers, the basic provisions on the state of emergency and on emergency powers should be included in the constitution, including a clear indication of which rights can be suspended and which rights do not permit derogation and should be respected in all circumstances. The Venice Commission has previously indicated that: "The emergency situations capable of giving rise to the declaration of states of emergency should clearly be defined and delimited by the constitution." This is necessary because emergency powers usually restrict basic constitutional principles, such as fundamental rights, democracy and the rule of law. It is up to each state to decide whether one or several emergency regimes will be recognised. If several emergency regimes exist, the differences between them (causes, levels of parliamentary oversight, levels of powers to the government, available emergency measures) should be clearly set in the legal rule. The state should always opt for the least radical regime available in the given circumstances (Alivizatos et al., 2020, 6–7).

2. Constitutional aspects of a state of emergency in the Republic of North Macedonia

According to its Constitution of 1991, the Republic of North Macedonia is a parliamentary democracy governing political system with an explicitly determined principle of division of state powers into legislative, executive and judicial (Article 8 paragraph 1 line 4 of the Constitution of the Republic of North Macedonia),[1] a system of checks and balances (relation between three branches of state power based on forms of mutual cooperation and reciprocal control and balances), and a comprehensive, modern catalogue of rights and freedoms designed on the basis of the European Convention of Human Rights.

The first case of Covid-19 was reported on 31 December 2019 and the source of the outbreak has been linked to a wet market in Wuhan in Hubei province, China. Cases of the virus have been confirmed in numerous countries and territories worldwide. On 11 March 2020 the World Health Organization (WHO) declared the global outbreak of a pandemic. Since then it has spread to most corners of the globe. While the health threat it poses and the challenge it represents for human health is paramount, no less important is the strain it puts on the legal order. For most of the affected countries, this outbreak is posing unprecedented institutional challenges and has obliged public institutions and governments to adopt strict measures affecting citizens' rights in a way unparalleled since the Second World War (Binder et al., 2020, 1). Indeed, the world was dramatically marked in 2020 by a pandemic due to the spread of a new, hitherto unknown and deadly coronavirus that causes the infectious disease Covid-19 *(coronavirus disease).*[2] In a lightning and aggressive expansionist campaign the virus has forced the public authorities of a large number of states to declare, organise and implement a series of new, differentiated, in a row

[1] Constitution of the Republic of North Macedonia. Official Gazette, no. 52/1991.

[2] A global pandemic of coronavirus Covid-19 was declared on 11 March 2020 by the World Health Organization (WHO).

strict measures to protect society and its members. This is, of course, a situation that is still ongoing and the consequences of which have not yet been definitively summarised. These are the most serious possible issues facing society, and this clearly shows us the current state of comparative state law theory and practice around the world marked by a pandemic. Furthermore, the plague of coronavirus seemed to open a Pandora's Box, from which all sorts of questions arose from the immediate medical and health ones about the nature of the virus, its sources and weaknesses, vaccine production and the organisation of mass vaccination of the population, to other broad and general socio-political issues, such as whether invoking a *de facto* or *de iure* state of emergency due to a pandemic will once again test the ability of the democratic order to cope with the challenges of the crisis of important segments of state and social organisation (Bačić, 2021, pp. 105–106).

Today, some 90 per cent of all constitutions worldwide contain unequivocal provisions for how to deal with states of emergency (Elkins et al., 2009, pp. 1–65). The emergency constitution may be defined as the set of formal legal provisions encoded in the constitution that specify who can declare an emergency, under which conditions an emergency can be declared, who needs to approve the declaration, and which actors have which special powers once it has been declared that the constitution does not assign to them outside emergencies (Bjornskov & Voigt, 2018, p. 103).

A state of emergency in the legal order of the Republic of North Macedonia is regulated by its Constitution. It could be declared only in cases within the bounds provided for by the Constitution, and only in a manner prescribed by the Constitution. In fact a state of emergency is regulated by several articles of the Constitution of the Republic of North Macedonia. The provisions are distributed in several places in the normative text of the Constitution and when talking about the state of emergency, everyone should be taken into account as a systematic coherent normative whole. The Constitution in Articles 54, 125, 126 and 128[3] stipulates when a state of emergency is introduced, who proposes to introduce it, who decides on its proclamation, how long it lasts, how it continues, who controls its legal effects, which rights of citizens cannot to be restricted and which bodies continue their work in emergency conditions (Шкарић, 2020).

The normative definition of the emergency state is provided by Article 125 of the North Macedonia Constitution: "A state of emergency exists when major natural disasters or epidemics take place. A state of emergency on the territory of the Republic of North Macedonia or on part thereof is determined by the Assembly on a proposal by the President of the Republic, the Government or by at least 30 Representatives. The decision to establish the existence of a state of emergency is made by a two thirds majority vote of the total number of Representatives and can remain in force for a maximum of 30 days. If the Assembly cannot meet, the decision to establish the existence of a state of emergency is made by the President of the Republic, who submits it to the Assembly for confirmation as soon as it can meet." Subsequently, one of the stated conditions, realistically and practically, was met. That is the outbreak of the Covid-19 epidemic on the territory of the

[3] The mandate of the judges of the Constitutional Court of North Macedonia, as well as members of the Judicial Council of the Republic of North Macedonia is extended for the duration of the state of war or emergency (Article 128 of the Constitution of the Republic of North Macedonia of 1991).

Republic of North Macedonia, which has been confirmed a pandemic by the World Health Organization. In the proposal of the Government of the Republic of North Macedonia for introducing a state of emergency from 18 March 2020 states that the epidemic, "has affected the territory of the Republic of North Macedonia". It cited the first case was on 26 February 2020 and 35 more cases to 17 March 2020. The Government of the Republic of North Macedonia had submitted this proposal to the Assembly of the Republic of North Macedonia and not to the President of the Republic of North Macedonia assuring that the mandate of the members of parliament is in force and that the Assembly should make the decision on the state of emergency. However, according to the Decision on Self-Dissolution of 16 February 2020: "The Assembly has restored the sovereignty of its citizens." Thus, from that moment it had ceased to exist from a constitutional standpoint (Шкарић, 2020). It is worth mentioning that the Assembly of the Republic of North Macedonia had been dissolved prior to the coronavirus crisis on 16 February 2020 for the purpose of convening early parliamentary elections on 12 April 2020. In the absence of a special law regulating the state of emergency and in conditions of a dissolved Assembly, in harmony with the Constitution, the President on 18 March 2020 proclaimed a state of emergency that lasted a total of three months or 95 days (Хаџи-Зафиров et al., 2020, p. 9). This is the first time in the contemporary constitutional history of the Republic of North Macedonia that a state of emergency had been confirmed. With the proclamation of the state of emergency, Article 126 of the Constitution and Article 10 of the Law of the Government of the Republic of North Macedonia[4] were activated, these stipulate that in case of any state of war (state of martial law) or a state of emergency, if the assembly cannot meet, the Government, in accordance with the Constitution, may adopt decrees with the force of law on issues within the jurisdiction of the Assembly (Хаџи-Зафиров et al., 2020, p. 9). Before the expiration of the 30 days, the Government is obliged to submit to the President a detailed report for the effects of the measures that had been taken and a reasoned proposal for the need of potentially extending the state of emergency for additional 30 days. In such circumstances the alternative subsidiary normative-constitutional solution had to be activated (applied), the decision for a state of emergency to be made by the President of the Republic of North Macedonia. Meanwhile, the President of the Republic of North Macedonia in conformity with Article 125 of the Constitution of the Republic of North Macedonia has adopted a Decision to establish the existence of a state of emergency on the entire territory of the Republic of North Macedonia. The state of emergency, its duration is limited *ex constitutione,* i.e. the Constitution of the Republic of North Macedonia limits the duration of the state of emergency to a maximum of 30 days. As a result, the state of emergency has been instituted for a maximum of 30 days at a time with a view to preventing the spread and coping with the consequence of the Covid-19 coronavirus.[5] The decision which is subject to parliamentary approval shall be submitted to the Assembly of the Republic of North Macedonia to be verified as soon as the assembly is able to meet. The state of emergency

[4] Закон за Влада на Република Северна Македонија, Службен весник на Република Северна Македонија, бр. 59/00, 26/01, 13/03, 55/05, 37/06, 115/07, 19/08, 82/08, 10/10, 51/11, 15/13, 139/14, 196/15, 142/16, 140/18, 98/19.

[5] Decision on determining the existence of a state of emergency. Official Gazette of the Republic of North Macedonia, no. 68/2020.

was determined, that is, declared by a Decision of the President of the Republic on 18 March 2020 because the President of the Assembly notified the Head of State that the Assembly is not able to hold a session and decide on the proposal of the Government due to the previously adopted decision of dissolution of the assembly. Besides that, the decision to proclaim a state of emergency was made by the President of the Republic of North Macedonia after the previously held session of the Security Council of the Republic of North Macedonia, which clarified two key issues: *firstly,* to be introduced a state of emergency instead of a state of crisis and, *secondly,* the Government to postpone the parliamentary elections scheduled for 12 April 2020 by a decree with the force of law (Шкарић, 2020; Жерајић, 2021, pp. 10–12).

In view of the above, it can be concluded that the decision of the President of the republic to establish the existence of a state of emergency has no declarative, but a constitutive legal effect: it activates the special provisions of the constitution relating to the state of emergency and, through the special authorities of the Government by decrees with the force of law, to manage the overcoming of the crisis and of its consequences to assume a legislative function, to intervene with economic measures in the economy, to restrict human freedoms and rights, etc. (Камбовски et al., 2020, p. 6). Additionally, the state of emergency in North Macedonia was declared after a broad consensus was reached among all relevant political parties because the country found itself in a parliamentary pre-election time period (Bieber et al., 2020, p. 9), that is, the constitutionally envisaged 60 days as a time limit for organising parliamentary democratic elections in the Assembly of the Republic of North Macedonia after the decision to dissolve the assembly (Article 63, paragraph 3).[6] This caused objectively the act of postponing the parliamentary democratic elections through a special decree with the force of law, which happened immediately after the first decision to establish the existence of a state of emergency. The state of emergency is not a health-related, but a special constitutional-legal, that is, legal category which, based on the decision to declare an epidemic as a serious danger to the health of the population, consists in putting into temporary force special constitutional-legal competencies and legal instruments for health protection, but also for regulating social relations and activities in various spheres (economy, education, etc.) (Камбовски et al., 2020, p. 6). In this context, it is worth withdrawing the demarcation line, i.e. to make the distinction between *a state of crisis* and *a state of emergency* as separate and particular legal concepts in their connotation (semantic) aspects. During a state of crisis, the government acts and undertakes activities in compliance with the existing Law on Crisis Management and other laws (above all, the Law on the Protection of the Population from Infectious Diseases, the Law on Protection and Rescue, etc.), and its activities and competencies are legally defined and limited. In a state of crisis, the existing laws do not give the government the right to issue decrees with the force of law, which in conditions of emergency, according to the Constitution, it has the right to pass. Thus, in accordance with Article 126, paragraph 2 of the Constitution of the Republic of North Macedonia, in a state of emergency, the authorisations of the government to adopt decrees with the force of law last until its completion, for which the assembly decides. By authorising the government to pass decrees

[6] Устав на Република Северна Македонија, Службен весник на Република Северна Македонија бр. 52/1991.

with the force of law, it practically takes over the legislative competence of the assembly, although the decrees are not, nor can they be considered, classical laws, but it is a special type of general normative legal acts that, according to the Constitution, are adopted in conditions when the country is in a state of emergency or in a state of war. In fact, the decrees with the force of law as a combination of legislative and executive power are an opportunity for the executive power to participate in the exercise of the legislative function and the decrees with the force of law are in fact acts of delegated legislation, whereby the principle of necessity – namely, the legislative competencies of the government are limited to the purposes for which the state of emergency has been declared and the measures must not exceed those objectives.[7] Therefore, the decrees with the force of law can amend and supplement provisions of existing laws, but must be within the framework of the Constitution. With the state of emergency declared by the head of state, the government was empowered to restrict human rights in accordance with the Constitution and international human rights treaties, although even in times of crisis the government may impose certain human rights restrictions in compliance with the Constitution, laws and international human rights instruments. The difference is that in a state of emergency the restrictions on human rights are made through the direct application of the decrees with the force of law, while in a state of crisis by the application of the existing current law (Каракамишева & Јовановска, 2020, pp. 28–29). The similarity between the two situations is that the government is obliged to respect the Constitution, laws and international treaties for the protection of human rights and freedoms in such restrictions. It is a fact that the state of emergency temporarily suspends the constitutionally guaranteed principle of separation of powers, but at the same time leads to the concentration of political power in the hands of the government due to the transfer of legislative power from the assembly to the government. The justification of this suspension of the principle of separation of powers is most often sought in the need to accelerate all activities of state bodies, while the restriction of human and civil rights and freedoms is done in accordance with the need to eliminate the threat posed by the state of emergency. In a state of prolonged duration of the health crisis, and thus the factual basis for the existence of the state of emergency, after the expiration of 30 days the question arose how to "extend" the state of emergency in conditions when its extension was requested by the medical profession, but it was also the only way for a somewhat normal functioning of the legal order and the political system within the described circumstances. As there was no constitutional basis for a decision to extend the state of emergency, the President of the Republic of North Macedonia, deciding on a new proposal of the Government of the Republic of North Macedonia, made a new decision to establish a state of emergency for a time period of 30 days. This decision was

[7] The principle of necessity requires that emergency measures must be capable of achieving their purpose with minimal alteration of normal rules and procedures of democratic decision-making. Moreover, the principle of necessity is not referred directly in the context of the institutional emergency measures, but may be derived from the requirement of proportionality and necessity of the emergency measures in the field of human rights. Therefore, the power of the government to issue emergency decrees should not result in a carte blanche given by the legislator to the executive. Given the rapid and unpredictable development of the crisis, relatively broad legislative delegations may be needed, but should be formulated as narrowly as possible in the circumstances, in order to reduce any potential for abuse. As a general rule, fundamental legal reforms should be put on hold during the state of emergency (Council of Europe, 2020, p. 4).

challenged by a certain political party before the Constitutional Court of the Republic of North Macedonia, claiming that: "The President has the right to declare a state of emergency with a maximum period of time of 30 days for the same legal and factual situation" (Каракамишева & Јовановска, 2020, p. 29, 62). On the other hand, the Constitutional Court of the Republic of North Macedonia rejected the initiative for assessment of constitutionality with the explanation that the Constitution of the Republic of North Macedonia does not limit from a quantitative (numerical) point of view, nor is it possible, how many times a state of emergency will be declared, if the competent state bodies like the Assembly of the Republic of North Macedonia or the President of the Republic of North Macedonia assess that the conditions and the need for its proclamation are met. This means that the Constitution of the Republic of North Macedonia stipulates that after the expiration of the time period of 30 days, the state of emergency ceases. If the factual conditions for the existence of a state of emergency remain, which is a constitutional basis and condition, a new additional decision for declaring a state of emergency is made. It is a guarantee that the state of emergency cannot be automatically extended, but there is a need for a new assessment of whether there are conditions and a need for the existence of a state of emergency, and if it is deemed necessary and justified, a new decision is made establishing the existence of a state of emergency for a certain period of time, which again may not be more than 30 days. This is because the state of emergency implies limitation (restriction) of certain freedoms and rights of man and citizen recognized in international law and determined by the Constitution of the Republic of North Macedonia, which must be an exception, due to which its time limit is necessary and subject to mandatory review. Following the spirit and the stated legal logic of the Constitutional Court of the Republic of North Macedonia, in conditions of the existence of the reasons for determining the state of emergency stated in the constitution of the Republic of North Macedonia, the President of the Republic of North Macedonia made 4 (four) consecutive decisions as follows: 18 April 2020 for a duration of 30 days, 18 May 2020 for a duration of 14 days and 30 May 2020 for a duration of 14 days. After these multiple extensions the state of emergency ceased on 13 June 2020. Nevertheless, two days later the President made a new decision to re-declare a state of emergency for 8 days starting on 15 June 2020. Pursuant to Article 1 of the new Decision the state of emergency was declared throughout the country for the preparation and conduct of early elections for members of the parliament of the Republic of North Macedonia, with measures aimed towards public health protection during the Covid-19 pandemic conditions. The state of emergency officially ended on 23 June 2020 (Жерајиќ, 2021, pp. 11–13; Хаџи-Зафиров et al., 2020, p. 16).[8]

8 Decision on determining the state of emergency no. 08-607 / 2 of 16 April 2020, for the period of time of 30 days published in the Official Gazette of the Republic of North Macedonia no. 104/20; Decision for determining the state of emergency no. 08-682 / 2 dated 16 May 2020, for the period of time of 14 days, published in the Official Gazette of the Republic of North Macedonia no. 127/20; Decision on determining the existence of a state of emergency no. 08-729 / 2 from 30 May 2020, for a period of time of 14 days, published in the Official Gazette of the Republic of North Macedonia no. 142/20; Decision on determining the existence of a state of emergency no. 08-777 / 3 from 15 June 2020, for a period of time of 8 days, published in the Official Gazette of the Republic of North Macedonia no. 159/20, adopted for the preparation and conduct of early elections for members of the Parliament of the Republic of North Macedonia, with measures for protection of public health in conditions of coronavirus pandemic Covid-19.

3. The impact of Covid-19 emergency measures on the field of human rights

The freedoms and rights of the individual and citizen can be restricted only in cases determined by the Constitution of the Republic of North Macedonia. The freedoms and rights of the individual and citizen can be restricted during states of war or emergency, in accordance with the provisions of the Constitution (Article 54). This allows the possibility to understand that the Constitution of the Republic of North Macedonia rigorously requires the basic rights and liberties to be limited only by the Constitution and in conformity with the reasons mentioned in the related articles of the Constitution without breaching upon their essence. Moreover, human rights may be temporarily suspended or limited for the duration of state of emergency, but only to the extent required by such circumstances and as much as the measures adopted do not create any discrimination on the basis of race, sex, ethnic origin, language, religion, political or other conviction, social status, education and other personal circumstances. Such limitations are foreseen under Article 54 of the Constitution of the Republic of North Macedonia of 1991 as the supreme legal act and simultaneously in the human rights international treaties – Article 15 of the European Convention on Human Rights of the Council of Europe as well as Article 4 of the International Covenant on Civil and Political Rights of the United Nations Organization, which the Republic of North Macedonia has ratified by law, and as such, are an integral applicative part of the internal legal order (Article 118).

Limitations are restrictions imposed on non-absolute human rights, such as the right to freedom of expression, the right to freedom of association or the right to private and family life. Effective enjoyment of all these rights and freedoms guaranteed by Articles 8, 9, 10 and 11 of the European Convention on Human Rights is a benchmark of modern democratic societies. Restrictions on them are only permissible if they are established by law and proportionate to the legitimate aim pursued, including the protection of public health. The legitimate aim of protection of health is contained in Article 5 paragraph 1e, paragraph 2 of Articles 8 to 11 and Article 2 paragraph 3 of Protocol No. 4 to the European Convention on Human Rights. These limitations are subject to a triple test of legality (are prescribed by law), legitimacy (pursue a legitimate aim) and necessity (are needed to reach the aim and proportionate to it). Certain convention rights do not allow for any derogation, i.e. considered non-derogable human rights: the right to life, except in the context of lawful acts of war (Article 2), the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), the prohibition of slavery and servitude (Article 4 paragraph 1) and the rule of "no punishment without law" (Article 7). There can be no derogation from abolishment of a death penalty or the right not to be tried or punished twice (Protocols No. 6 and 13 as well as Article 4 of Protocol No. 7) (Alivizatos et al., 2020, pp. 2–6).

It is recognised at the outset that governments are facing formidable challenges in seeking to protect their populations from the threat of Covid-19. It is also understood that the regular functioning of society cannot be maintained, particularly in the light of the main protective measure required to combat the virus, namely confinement. It is moreover

accepted that the measures undertaken will inevitably encroach on rights and freedoms which are an integral and necessary part of a democratic society governed by the rule of law. The Republic of North Macedonia pursuant to Article 15 of the European Convention on Human Rights used the possibility to restrict several rights on account of protection of health (Article 5e provides for an explicit ground to detain people due to infectious diseases) subsequently depositing notifications to the Council of Europe that the Republic of North Macedonia shall exercise the right to derogate from its obligations under the European Convention on Human Rights on the entire territory of North Macedonia. Since the first case of Covid-19 was detected on the territory of the Republic of North Macedonia on 24 February 2020 the Government of the Republic of North Macedonia gradually has adopted a set of decisions, conclusions and has been taking concrete preventive measures to combat Covid-19 and to protect the public health. The measures introduced by the Government of the Republic of North Macedonia, among others include: suspension of regular classroom instruction in primary, secondary and vocational schools and universities, to be replaced with distance home learning, restriction of public assemblies, cancelling all public events, meetings and gatherings, closing of museums, theatres and cinemas for visitors, cancellation of performances and conferences, suspension of international passenger air traffic, establishing special rules of isolation and state-organised quarantine for citizens entering the territory, ban on and special regime of movement in parts and on the entire territory of the country, as well as additional movement restrictions. The application of these measures may influence the exercise of certain rights and freedoms under the convention and in some instances give reason for the necessity to derogate from certain obligations of the Republic of North Macedonia under Article 8 and Article 11 of the European Convention on Human Rights, Article 2 of the First Protocol and Article 2 of Protocol No. 4 to the convention. The measures adopted by the government are proportionate and targeted, required by the exigencies of the situation and are not inconsistent with other obligations under international law (Council of Europe – Directorate of Legal Advice and Public International Law, 2020; Камбовски et al., 2020, pp. 20–21).

4. The decrees with force of law

The authorisation of the government to adopt decrees with the force of law lasts until the end of the state of war or the state of emergency. During state of emergency conditions, the system of checks and balances, i.e. the separation of powers into legislative, executive and judiciary is temporarily replaced by a concentration of legislative and executive power in one body – the government, which was put in a position to take measures to address the challenges of protecting the population from the effects of the pandemic, such as those of health-related nature, as well as no less important economic and social consequences (Хаџи-Зафиров et al., 2020, p. 9). As stated in the Decision of the Constitutional Court of the Republic of North Macedonia, "the decrees with the force of law, in accordance with Article 126, paragraph 1 of the Constitution of the Republic of North Macedonia, must be adopted on the basis and within the bounds of

the Constitution and legislation, i.e. in the compliance with the law".[9] By decree with the force of law the government regulates issues within the competence of the assembly in case of a state of war or a state of emergency if there is no possibility for convening the assembly (Article 36 paragraph 1 of the Law on Government). This means that the decrees with the force of law of the government regulate issues that are within the competence of the assembly and which are legal matters *(materia legis)*. It should be emphasised that neither in the Constitution, nor in the Law on Government,[10] nor in the Rules of Procedure of the Government of the Republic of North Macedonia[11] are there provisions that regulate a special legal procedure for adopting decrees with the force of law in the government. Hence, this represents a legal gap *(lacuna legis)* because a regulation that by its legal force possesses the character of a law in substantial (material) connotation/sense and with which derogation of specific legal issues is accomplished, as well as changing the legal situations previously regulated by laws adopted by the legislature, should not be carried out by the executive power in the same manner and procedure as bylaws are adopted outside the frameworks of a state of emergency (Павловска-Данева, 2020, pp. 39–40).

In the period of time from 18 March 2020 to 22 June 2020 a total of 250 decrees with the force of law were adopted. According to the type, 101 of the total number of adopted decrees are decrees with the force of law for application of a specific law, 41 are original decrees with the force of law, while 107 are decrees with the force of law for amendments to existing decrees. Only one decree was adopted to terminate an existing decree with the force of law (Трпевски, 2020, p. 16).

Table 1.
Review of adopted decrees with force of law by month

Month	**March 2020**	**April 2020**	**May 2020**	**June 2020**
The number of decrees with force of law	43	97	58	52

Source: Трпевски, 2020, p. 16.

The decrees regulate a total of 33 areas with the force of law. According to the field of regulation, most of the decrees with the force of law refer to finance (54), health protection (22), education (19), transport and communications (16), as well as labour relations (14) (Павловска-Данева, 2020). Based on the analysis of the already adopted decrees with the force of law, it can be concluded that the principle of proportionality is not

9 Одлука на Уставниот Суд на Република Северна Македонија У.бр. 49/2019, Службен весник на Република Северна Македонија бр. 135/2020.

10 The Law on the Government of the Republic of North Macedonia has only one article dedicated to the decrees with the force of law. This is Article 36, paragraph 1 of the Law on Government which is relatively brief. It prescribes only the possibility and general right to issue a decree with the force of law by the government during a state of war or state of emergency. However, it does not provide any further details!

11 Деловник на Владата на Република Северна Македонија, Службен весник на Република Северна Македонија бр. 38/01, 98/02, 9/03, 47/03, 64/03, 67/03, 51/06, 5/07, 15/07, 26/07, 30/07, 58/07, 105/07, 116/07, 129/07, 157/07, 29/08, 51/08, 86/08, 114/08, 42/09, 62/09, 141/09, 162/09, 40/10, 83/10, 166/10, 172/10, 95/11, 151/11, 170/11, 67/13, 145/14, 62/15, 41/16, 153/16, 113/17, 228/19, 72/20, 215/20, 309/20, 41/21, 56/21.

always respected when adopting such decrees that derogate the existing laws for the protection of public health. In certain situations, there are provisions in which it can be foreseen that they will produce legal consequences even after the end of the state of emergency. Also, the constitutionality of certain provisions of some decrees has been questioned (e.g. the reduction of judges' salaries). Certain decrees that cause particular public attention are changed too often, are passed in a non-transparent manner and in an extremely short period of time without consultation with interested parties, experts and the civil society (Камбовски et al., 2020, p. 15).

5. The activity of the Constitutional Court of the Republic of North Macedonia during the state of emergency

Although the decrees with the force of law, as a rule, should be adopted in order to deal with the causes and consequences of the pandemic, in the absence of any oversight by the Assembly over the executive power, the need for oversight of the observance and safeguarding of the universal European fundamental values of democracy, the rule of law and human rights by other relevant state bodies is emphasised. Without any doubt, it should be emphasised that the importance of the Constitutional Court as the sole domestic controller whose constitutional competence is to protect the constitutionality and legality of the adopted decrees with the force of law. In that regard, in addition to several initiatives, the Constitutional Court of the RNM for the first time acted on its own initiative *(proprio motu)* assessing the constitutionality and legality of 5 (five) of the decrees with force of law and decided to initiate a procedure for assessing the constitutionality and legality for 3 (three) of the disputed decrees (Хаџи-Зафиров et al., 2020, p. 18).[12]

In compliance with Article 108 of the Constitution of the RNM, "the Constitutional Court of the Republic of North Macedonia is a body of the Republic protecting constitutionality and legality". For this reason, the core jurisdiction to the Constitutional Court of the Republic of North Macedonia is the constitutional-judicial review of constitutionality and legality over general normative legal acts. Constitutional judicial review is, in short, a procedure for examining the conformity of legislation with the constitution and its provisions, and the judicial determination that legislation that is inconsistent with the provisions of the constitution is un-constitutional and null and void. That is, constitutional-judicial review is an instrument that limits the discretion and scope of action of political decision-makers, especially with regard to the fundamental rights and freedoms protected by the constitution. Constitutional judicial review extends the idea of constitutionality according to which the supremacy of the Constitution limits the government beyond the realms of public law towards the realms of criminal, civil and administrative law, and in these senses constitutional judicial review is central to the idea of neo-constitutionalism (Roznai, 2020, p. 355).

[12] For more information see the Constitutional Court Decision of 12 May 2020, У.бр.216/2020 (http://ustavensud.mk/?p=19683).

Having in mind that during the state of emergency the legislative function of the assembly passes to the government and especially due to the fact that the state did not have a functional assembly, the role of the Constitutional Court of the Republic of North Macedonia becomes more significant in order to control the constitutionality of the decrees. Deciding on the submitted initiatives for constitutional control of the decrees with the force of law, the decisions on measures for dealing with Covid-19 adopted by the government, as well as the decisions on determining the existence of a state of emergency, the Constitutional Court adopted a total of 148 decisions and resolutions with which control and assessment of the constitutionality and legality of a total of 172 regulations was performed (Трпевски, 2020, p. 23).

Table 2.
Statistical review of decisions and resolutions by the Constitutional Court on submitted initiatives

	Decisions		**Rulings**			
	An annulment of regulation	**An abrogation of regulation**	**The initiative is rejected**	**The procedure is initiated**	**The procedure is not initiated**	**The procedure is terminated**
The decrees with force of law	10	0	25	92	11	2
The Government's decisions on measures for Covid-19	0	0	3	0	1	1
The decisions of state of emergency	0	0	6	1	0	0
The total by manner of proceedings	10	0	34	93	12	3
The total by type	10		142			

Source: Трпевски, 2020, p. 23

6. Conclusion

On 18 March 2020 for the first time in its history, in the Republic of North Macedonia, by decision of the President of the country, a state of emergency was declared due to a declared pandemic of the Covid-19 virus. The state of emergency was declared by the President of the country in accordance with the dissolved Assembly of the Republic of North Macedonia as a result of the then-announced early parliamentary elections. In addition to the intensified measures for the protection of the health of the population,

the state of emergency caused the need to introduce new practices and adapt the existing work procedures in various social processes in the country. The health crisis and the state of emergency undoubtedly affected the functionality and efficiency of the entire state apparatus in acting and exercising its functions in practice; the need to declare a state of emergency due to the Covid-19 pandemic arose at a time when the assembly was dissolved. On 17 February 2020 the members of parliament in the assembly passed a decision to dissolve in order to start the mandatory 60-day deadline for holding early parliamentary elections. Therefore, at the instigation of the government a state of emergency was declared by the President of the Republic of North Macedonia.

The Assembly of the RNM has not acted concerning the formal approval of the decrees with the force of law of the Government of the RNM. Such acts should address issues related to an exceptional situation, and should not remain in force after the end of the state of emergency. Unless of course they have been confirmed, and extended by the legislative state power via a special law.

The state of emergency in the RNM has shown that it is necessary to adopt a special *Law on Legal regime of state of emergency* where all issues related to the state of emergency will be regulated in a clear, precise and detailed manner from a normative legal point of view, especially the issue of the procedure for enacting decrees with the force of law, the scope and content of the questions, i.e. the question whether the decrees with the force of law can regulate only questions related to the reason for determining the state of emergency and dealing with the consequences of the factual situation due to which the state of emergency was determined and, finally, their legal effect, i.e. validation after the end of the state of emergency.

Instead of the parliamentary democratic elections for members of parliament to be announced by the President of the Assembly of the Republic of North Macedonia, as prescribed *de lege lata* and provided in Article 67, paragraph 4 of the Constitution of the Republic of North Macedonia, they should be announced by the President of the Republic of North Macedonia as head of state which is in fact the standard legal solution in the comparative constitutional law, which eliminates (avoid) the deficiency by announcing parliamentary elections in conditions and circumstances of a self-dissolved assembly.

By decree with the force of law the government regulates issues within the competence of the assembly in case of a state of war or a state of emergency if there is no possibility for convening the assembly. During the state of emergency in North Macedonia in the period of time from 18 March 2020 to 22 June 2020 the Government of the Republic of North Macedonia adopted a total of 250 decrees with the force of law, including original decrees, decrees aimed at applying a certain law, as well as decrees amending and supplement previously adopted decrees.

The constitutional judiciary plays a crucial role in exercising control and assess of the executive's prerogatives during states of emergencies, taking decisions on the constitutionality of a declaration of a state of emergency as well as reviewing the constitutionality and legality of specific emergency measures – legislative decrees which have the force of law.

References

Albert, R. & Roznai, Y. (2020). Introduction: Modern Pressures on Constitutionalism. In R. Albert & Y. Roznai (Eds.), Constitutionalism Under Extreme Conditions. Springer, Cham. Online: https://doi.org/10.1007/978-3-030-49000-3_1

Alivizatos, N., Bílková, V., Cameron, I., Kask, O. & Tuori, K. (2020). Respect for Democracy, Human Rights and the Rule of Law during States of Emergency. Reflections. European Commission for Democracy through Law. Online: https://bit.ly/3D6n1uC

Binder, K., Del Monte, M., Diaz Crego, M., Eckert, G. & Kotanidis, S. (2020). States of Emergency in Response to the Coronavirus Crisis: Situation in Certain Member States. European Parliamentary Research Service. Online: https://bit.ly/3iUZINr

Bačić, P. (2021). Corona Ante Portas i Ustav Izvanrednog Stanja u Aktualnoj Politici i Pravu Sporta. Zbornik Radova Pravnog Fakulteta Sveučilišta u Splitu, 58(1), 105–120. Online: https://doi.org/10.31141/zrpfs.2021.58.139.105

Bieber, F., Prelec, T., Djolai, M., Emini, D., Marović, J. et al. (2020). The Western Balkans in Times of the Global Pandemic. BIEPAG Policy Brief, April 2020, pp. 1–37. Online: https://hal-sciencespo.archives-ouvertes.fr/hal-02586059

Bjornskov, C. & Voigt, S. (2018). The Architecture of Emergency Constitutions. International Journal of Constitutional Law, 16(1), 101–127. Online: https://doi.org/10.1093/icon/moy012

Council of Europe (2020). Respecting Democracy, Rule of Law and Human Rights in the Framework of the Covid-19 Sanitary Crisis. A Toolkit for Member States. Strasbourg.

Council of Europe – Directorate of Legal Advice and Public International Law (2020): Note Verbale from the Permanent Representation of the Republic of North Macedonia to the Council of Europe, JJ9021C Tr./005-232. Online: https://rm.coe.int/16809e1288

Elkins, Z., Ginsburg, T. & Melton, J. (2009). The Endurance of National Constitutions. Cambridge University Press. Online: https://doi.org/10.1017/CBO9780511817595

Каракамишева, Т. & Јовановска, Д. (2020). е (не)возможно владеење на правото кога државата е во услови на вонредна состојба? Зборник на трудови правно-политички и економски дискурс во време на Covid-19. Универзитет Св. Кирил и Методиј, Правен Факултет Јустиниан Први. Скопје.

Камбовски, В. et al. (2020). Правни аспекти на вонредната состојба. Скопје.

Павловска-Данева, А. (2020). Правната регулатива во услови на вонредна состојба, Зборник на трудови правно-политички и економски дискурс во време на Covid-19. Универзитет Св. Кирил и Методиј, Правен Факултет Јустиниан Први. Скопје.

Russell, P. H. (2004). Constitutional Odyssey. Can Canadians Become a Sovereign People? University of Toronto Press.

Roznai, Y. (2020). Introduction: Constitutional Courts in a 100-Years Perspective and a Proposal for a Hybrid Model of Judicial Review. ICL Journal, 14(4), 355–377. Online: https://doi.org/10.1515/icl-2020-0039

Трпевски, Б. (2020): Владеењето на правото и човековите права во услови на вонредна состојба во Република Северна Македонија 2020. Скопје.

Хаџи-Зафиров, Ж. et al. (2020). Анализа на донесените уредби со законска сила за време на вонредната состојба во 2020. Скопје.

Шкариќ, С. (2020, April 17). Правната битка за вонредната состојба. ResPublica. Online: https://respublica.edu.mk/mk/blog/2020-04-16-23-18-27

Жерајиќ, С. (2021). Анализа на искуствата на институциите за време на вонредната состојба и уредбите со законска сила. Скопје.

Public Governance, Administration and Finances Law Review Vol. 7. No. 2. (2022) • 173–189.

DOI: 10.53116/pgaflr.2022.2.8

Polish Experience in the Search for the Optimal Model of Performing and Financing Metropolitan Tasks

Małgorzata Ofiarska*

* Associate Professor, University of Szczecin (Poland), Faculty of Law and Administration, e-mail: malgorzata.ofiarska@usz.edu.pl

Abstract: For nearly 25 years, the problem of managing public affairs in metropolitan areas in Poland has been present in the public debate and the legislative process. The aim of the study is to analyse and evaluate the projects and adopted acts dedicated to such areas. Using legal dogmatics and historical and legal methods, successive attempts have been made to adopt a legal basis for managing metropolitan areas and performing and financing metropolitan tasks, both in the form of a single act, regulating the organisation and functioning of metropolitan self-government throughout the country using a comprehensive and framework approach and legal solutions dedicated to only one metropolitan area. In 2017, the first and so far the only metropolitan union in Poland was established in the Silesian Voivodeship. It was determined that the search for appropriate organisational forms for the performance and sources of financing metropolitan tasks had not yet been completed. So far, an agreement has been reached on the choice of a statutory functional solution based on the structure of a metropolitan union and a catalogue of metropolitan tasks, separate from the public tasks of municipalities and districts. The metropolitan union was provided with financing from the state budget.

Keywords: municipal cooperation, metropolitan area, metropolitan union, metropolitan district

1. Introductory remarks

Since the restitution of the local self-government in Poland in 1990, its system has been subject to specific evolutionary processes. Although the most important organisational and functional problems have already been resolved, optimal methods of performing specific public tasks and their sources of financing are still being sought.

The unification of functions, tasks and sources of income of local self-government units (especially municipalities) carried out at the stage of determining the political and financial basis for the functioning of local self-government, the successive transfer from the sphere of government administration of tasks to be performed subsequently by the local self-government, and even taking immediate needs into account (the need to secure the current needs of the state budget during the public finance crisis at the turn of the

20th–21st century or the challenges faced by local self-government in the conditions of the Covid-19 pandemic) were the premises for the growing interest on the part of local self-government in instruments to correct the regulations adopted in this field and developing various forms of intermunicipal cooperation (IMC) (Ofiarska, 2022).

This problem has been identified and analysed in the world literature for many years (Hulst & Montfort, 2007; Teles, 2016; Swianiewicz & Teles, 2018). In the last decade, detailed research into the essence and legal nature of cooperation, its motives and barriers as well as problems regarding the organisation, functioning and results of intermunicipal cooperation has been conducted in Western European countries, including France (Boyer, 2012), Germany (Stork, 2012), Switzerland (Steiner & Kaiser, 2018), Austria (Matschek, 2011) and the Netherlands (Allers & de Greef, 2018), Southwest, Spain (Bel et al., 2013), Portugal (Camões et al., 2021), South, that is, Italy (Marotta et al., 2018) and Slovenia (Rakar et al., 2015), and North (Wiberg & Limani, 2015) and Central and Eastern Europe, including Hungary (Balázs, 2014; Hoffman et al., 2016), Poland (Kołsut, 2015; Dolnicki, 2018; Ofiarska & Ofiarski, 2021), the Czech Republic (Bakoš et al., 2020) and Slovakia (Grešová, 2016). Intermunicipal cooperation is also the subject of numerous studies in non-European countries, such as the United States (Warner et al., 2021), Canada (Spicer, 2015) and various Latin American countries (Yurisch et al., 2019; da Silva et al., 2020).

In Poland, the issue of cooperation between LGUs is gaining importance, especially in connection with the legislator's work on finding an effective legal formula for managing metropolitan areas. The last decade was therefore dominated by studies of the system of metropolitan areas and the search for appropriate forms of cooperation for the performance of public tasks in such areas. These issues are the subject of research conducted from various perspectives, mainly economics and finance, management and quality sciences, administration and legal sciences (Szlachetko & Gajewski, 2016; Ofiarska, 2017; Szydło, 2018; Szlachetko, 2021), and cover various issues of a specific nature. The reason for conducting such research is the necessity, diagnosed by practice and doctrine, to supplement the current structure of the public administration apparatus in its self-government sphere with entities capable of efficiently and effectively meeting the collective needs of residents, combined into one organism with neighbouring local self-government units through a combination of mutual dependencies resulting from functional, social, economic and cultural (Dolnicki, 2020, pp. 73–74) links. Initially, the main problems in the metropolitan discourse (scientific discussions and political debates) were primarily the delimitation and legal regulation of the status of metropolitan areas and urban functional areas. Later, in connection with the choice of the statutory functional solution based on the structure of the metropolitan union, these were accompanied by discussions on the legal nature and catalogue of statutory public tasks of the metropolitan union and the search for adequate sources of income to finance these tasks. The issues regarding the management of metropolitan areas have also gained special importance in connection with the adoption of appropriate instruments for implementing the European Union's regional policy (see Krukowska & Lackowska, 2017).

The problem is universal, interdisciplinary and complex, as evidenced by, inter alia, 30 years of attempts to adopt systemic solutions for large cities and the surrounding

municipalities. The need to formulate special solutions for urban areas was already expressed during the work on the draft of the first act on local self-government, adopted by Parliament in 1990. However, the first act on local self-government ignored the incompletely identified specific opportunities and needs of metropolitan areas. Neighbouring towns and municipalities were authorised to cooperate only on a voluntary basis (e.g. in the form of intermunicipal unions and associations), then it was recognised that legally regulated universal (analogous to urban, rural and urban–rural municipalities) forms of activity would be sufficient. The next stage of state system reform, consisting of the expansion of local self-government by districts (units of supra-municipal local self-government) and self-government voivodeships (units of regional self-government), in 1998, did not resolve the basic problems of metropolitan areas as the institutional solutions to managing metropolitan affairs in such areas were omitted. There was also a lack of legal solutions to enable the efficient and effective performance of metropolitan tasks needing to be performed by the local self-government units in such an area. The failure of voluntarily created municipal unions to develop and coordinate specific public tasks was also due to the lack of a stable source of income and the inability to cooperate with local self-government units at other levels. The abandonment of metropolitan reform in Poland was largely due to, on the one hand, the different positions of political parties (including coalition ones) in Parliament and the government's indecisive actions, and, on the other hand, different visions of the objectives and process of reform among different levels of local self-government.

The aim of the study is to indicate the main directions of the assumptions of draft acts and adopted acts, prepared on the basis of various initiatives, dedicated to the problems of managing public affairs at the metropolitan level. The thesis was verified that the normative concept of the metropolitan union finally adopted in Poland is a compromise between various expert assumptions submitted for nearly 30 years. At the same time, the introduction of one universal model of a metropolitan union was abandoned in favour of individualised solutions that took the specificity of particular metropolitan areas into account. Therefore, the subject of the analysis and evaluation were both the binding regulations constituting the legal basis for the organisation of the functioning metropolitan union association in the Silesian Voivodeship, and those proposed in the draft acts on the establishment of metropolitan unions, submitted unsuccessfully to the Sejm during the previous (2015–2019) and current term of office (until 30th March 2022). The analysis was carried out according to the process of regulating the basic aspects of metropolitan management: defining metropolitan tasks, indicating the essence of the metropolisation process, in the case of Poland implemented by creating a metropolitan union, establishing the foundations for creating the composition of a metropolitan union and determining the material foundations of its functioning. Using legal dogmatics, as well as historical legal methods, successive attempts were made to adopt the legal foundations for managing metropolitan areas and performing and financing metropolitan tasks.

Attempts to appoint metropolitan boards to control the development of the metropolitan area have been made in many European countries. However, metropolitan management is implemented in various organisational and legal forms and in diversified spatial frameworks. The past experience of European countries shows that the basic models

of the metropolitan system are solutions based on voluntary cooperation between local self-government units or through the establishment of general metropolitan units (metropolitan districts, metropolitan regions). The choice of the right organisational form for solving metropolitan problems is mainly determined by the systemic, political, historical, settlement and economic specificity of a given area. An evolutionary shift from forms based on voluntary cooperation to the establishment of general-metropolitan units is also visible.

The presented Polish assumptions and projects were mainly prepared in response to the experience gained from the operation of voluntary forms of cooperation, which indicated that solutions based on the use of municipal union institutions did not bring the expected results to large cities and metropolitan areas. Metropolitan initiatives and projects in which the search for an appropriate systemic concept for the capital city of Warsaw was sought will remain outside the scope of considerations (Niziołek, 2007; Izdebski, 2015), due to the specific features of this metropolitan area and the unique statutory changes implemented, establishing, inter alia, structures and forms of cooperation (ranging from the autonomy of urban districts designed as independent municipalities to the concept of an integrated city with urban districts devoid of autonomy in practice and performing limited functions). The analysis of assumptions and draft acts, as well as the adopted statutory solutions to the problems of managing public affairs at the metropolitan level will enable certain universal phenomena and tendencies that are also visible in studies of metropolisation processes occurring in other contemporary European countries to be identified.

2. Genesis and assumptions of selected concepts and drafts of legal solutions dedicated to large cities, agglomerations and metropolises (1990–2013)

Problems in the system of metropolitan areas already featured in the public debate during the initial period of the political transformation in Poland. At that time, it did not gain a proper place in the public debate nor in the work of the government administration. In 1993, as part of the Joint Commission of the Government and the Local Self-Government, a board for the metropolitan system was established to develop systemic assumptions for the functioning of public authorities in metropolitan areas. In this period, work aimed at introducing another reform of public administration was carried out and new systemic solutions were sought in relation to large cities in order to prepare them to perform the functions of cities equal to districts in the future. In the draft act on district self-government of 1993, it was proposed to adopt solutions defining the essence of metropolitan complexes and establishing the rules for their creation, organisation and functioning as well as financing. The above proposal to define the legal status of metropolitan complexes was assessed as debatable and leading to the creation of not only a separate, but also a supra-district level of local self-government (Kieres, 1994, p. 79).

In the same period, other attempts were made to develop future systemic solutions for large cities, but they were temporary and experimental in nature, constituting *de facto* a prototype for the future district. These were the goals of the so-called pilot programme of public administrative reform (intended for large cities) starting in 1993, the substantive continuations of which were municipal public service zones functioning until 1 January 1999 (intended for smaller cities and the surrounding municipalities).

In the following years, several concepts concerning the legal position, tasks, organisation and principles of functioning and financing of large cities, agglomerations and metropolises, of a standardised or tailored nature (to a specific agglomeration/metropolis), developed by both representatives of the doctrine and teams appointed by government administrative bodies (Minister of the Interior and Administration, Silesian Voivode) or parliamentary groups, were discussed and assessed.

The concept of a metropolitan district was universal in nature, proposed in 2005 in a comprehensive draft act amending the act on introducing the basic three-tier territorial division of the state and amending certain other acts concerning local self-government, prepared in 2004–2005 for the purposes of the National Development Plan project for 2007–2013. An important element of the project was the creation of 12 metropolitan districts, including a special capital district with regional status (Izdebski, 2014, p. 276, 378), carrying out, in addition to the tasks typical of a district, also tasks characteristic of a metropolitan district. This project was not subject to parliamentary work. The concept of a metropolitan district was also referred to in a later period by identifying metropolitan tasks and searching for the appropriate form of their implementation. It was recognised that, within the framework of binding constitutional and international standards, the only possibility was to adopt a solution consisting of creating, from metropolitan areas, specific units of the basic territorial division in the form of metropolitan districts, being a special category of district. A metropolitan district would implement only metropolitan tasks and would have an organisational structure, as a rule modelled on the district (Izdebski, 2010, pp. 67–68).

Attempts have been made to develop optimal legal solutions for the metropolitan area in the Silesian Voivodeship. The essence of one of the concepts of the special act for the Silesian conurbation was to be the creation of a regional union (called Śląsk or Silesia), with the status of a regional self-government unit (Knosala et al., 2007). Another metropolitan draft act, presented in 2007–2008 and prepared at the request of the Silesian Voivode, referred, inter alia, to the German experience in the management of agglomerations and to the concept of a municipal union regulated in the Act on Municipality Self-Government. It assumed the creation of an obligatory municipal union, which could be joined by neighbouring municipalities, after being approved by the minister responsible for administration (Jaworska-Dębska, 2017, p. 230). Both draft acts were not subject to parliamentary work. Instead, they were to constitute the basis for the development – at the request of the government – of a universal act regulating the functioning of metropolitan unions. In the first stage of the implementation of the act, there would be only two pilot unions (in Silesia and the Tri-City – Gdańsk, Gdynia and Sopot). Ultimately, it was planned to establish a union for several metropolitan areas.

In January 2007, a government team was appointed to prepare a diagnosis of problems in the development of metropolitan areas and a recommendation for their delimitation in Poland. The results of the team's work were used in the draft act of May 2008 on urban development, regional development centres and metropolitan areas. It was decided that, in order to solve problems of public management common to local self-government units in large urban agglomerations, a metropolitan complex should be established by the Council of Ministers on the terms specified in the Act. Belonging to this group of municipalities and districts located in the metropolitan area was to be obligatory. The above proposals to define the legal status of metropolitan complexes were considered to be a repetition of previously formulated proposals (Dolnicki, 2010) and were assigned a classificatory meaning (Edwarczyk, 2015, p. 309).

Another attempt to work out future system solutions for metropolitan areas was made in the draft act on urban policy and cooperation of local self-government units in September 2008. A dual method of creating a metropolitan area was proposed. The act would create two metropolitan areas, Warsaw and Upper Silesia. Further areas could be established by the Council of Ministers on the terms specified in the act. In order to handle the affairs of the metropolitan area, it was proposed to establish a metropolitan complex to which municipalities and districts located entirely in this area would belong by virtue of law. The scope of activities of the metropolitan complex was planned to be similar to those proposed in the draft act of May 2008. Reactions to the project were mixed. On the one hand, objections were raised as to the scope of its application or even its legitimacy and compliance with the constitution, and the proposal of some solutions (primarily inefficient sources of income) was criticised. On the other hand, the creation of an institutional level for cooperation between local self-government units and the opportunity to boost their development was positively assessed (see Ignasiak-Szulc, 2009 and the cited literature).

Another government draft act on state urban policy and cooperation among local self-government units of May 2009 formulated a proposal to allow only the Council of Ministers to create metropolitan areas (with a total number of inhabitants of no less than 2,000,000, with a population density exceeding 200 inhabitants per km^2). In order to handle the affairs of the metropolitan area, it was proposed to establish a metropolitan complex, to which municipalities and districts located entirely in this area would belong by virtue of law. Similarly to the previous draft acts, the scope of the metropolitan complex was defined and similar rules for its organisation were proposed. Legislative work on the draft act was suspended in 2010, due to disagreements between the local self-government and the government during the consultations.

Due to the suspension of work on the preparation of solutions addressed to all metropolitan areas, those aimed at preparing the draft metropolitan act for only a specific area were resumed. In 2011–2012, work was done on adopting the legal basis for obligatory cooperation between fourteen cities with district rights (forming the Upper Silesian Metropolitan Union) with the seat of the metropolitan district authorities in Katowice. In 2012, a proposal was drawn up, the essence of which was to preserve the existing basic three-tier territorial division of the state and to create another category of district – the metropolitan district, which would include statutorily designated cities with district

rights. A metropolitan district would take over some of the tasks of cities, the effective performance of which – due to their supra-local nature – exceeded the capabilities of individual cities and municipal unions. The, proposal addressed to one metropolitan area, was not approved by the government; instead, consultations were carried out on the most important dilemmas regarding the preferences for adopting detailed solutions for the demarcation of metropolitan areas, determining the tasks carried out there, as well as the organisational structure and the principles of managing metropolitan areas and financing them. Based on the collected opinions and conclusions, the directions of further government actions aimed at preparing legal and organisational changes aimed at improving the functioning of urban agglomerations have been set (Ministerstwo Administracji i Cyfryzacji, 2013).

3. Genesis, concept and general evaluation of the first act on metropolitan unions

In August 2013, a parliamentary draft act on the metropolitan district was submitted to the Sejm.[1] The project did not specify any criteria that had to be met in order to create a metropolitan district. They could be created by the Council of Ministers, both on its own initiative and at the request of the interested municipality, district or city council with district rights. Although the Council of Ministers could consult the inhabitants of a given community, these consultations were not binding. The metropolitan district would carry out its own tasks and commissioned by the act in the field of government administration. The proposed metropolitan district system was essentially a duplication of the current district model. The original version of the draft act on the metropolitan district met with a diverse assessment, expressed both in the legislative process and in the literature (Antkowiak, 2016, pp. 100–108).

The culmination of the two-year procedure of the draft act on metropolitan districts was the adoption on 9 October 2015 of the Act on Metropolitan Unions.[2] In the course of parliamentary work, the concept of the metropolitan area management model was changed and the idea of creating a metropolitan district was abandoned in favour of adopting a functional solution in the form of a metropolitan union. It was to be an association of local self-government units located in a given metropolitan area, with a separate legal personality from the units that constituted it. The phrase "association of local self-government units" has not yet appeared in normative acts and has caused the greatest doubts as to the nature of the metropolitan union. It could be created in a spatially coherent zone of influence of the city that is the seat of the voivode or the regional council, characterised by the existence of strong functional connections and the advancement of urbanisation processes, inhabited by at least 500,000 inhabitants. The Council of Ministers could establish a union on its own initiative or at the request of the municipality council located within the metropolitan area, in order to implement statutory public tasks in the

[1] Paper no. 2107 of the Sejm of the 7th term.
[2] Journal of Laws of 2015, item 1890.

field of shaping the spatial order, developing the union area, public transport in the area of the union, and cooperation in determining the route of national and provincial roads in the area of the union. It would have two bodies, a regulatory and control one (an assembly, consisting of delegates of municipalities and districts included in the union – two from each local self-government unit) and an executive (a three-person board, elected by the assembly). The budget resolution was to be the basis for financial management. The catalogue of sources of income for metropolitan unions has been specified in the amended act on the income of local self-government units. It includes, inter alia, contribution to personal income tax from natural persons residing in the area of the metropolitan union, contributions from municipalities included in the metropolitan union and subsidies from the state budget and from local self-government budgets.

The solutions proposed in the act on metropolitan unions were not applied in practice, because, during the period of its validity, the Council of Ministers did not issue the regulation necessary for its application, thereby specifying the rules for dividing the state's territory into metropolitan areas, in which individual metropolitan unions were to be established as a result of specific regulations. In the autumn of 2015, the parliamentary majority changed, which questioned the legitimacy of the solutions proposed in the act, because, in its opinion, the most powerful municipal centres in Poland were privileged.

The Act on Metropolitan Unions expired in connection with the entry into force of the Act of 9 March 2017 on the Metropolitan Union in the Silesian Voivodeship.[3] Despite the fact that the adoption of statutory systemic legal solutions dedicated to metropolitan areas has been postulated for many years, the regulations introduced by the Act on Metropolitan Unions have been assessed quite critically. The literature negatively assessed, inter alia, the universal nature of the act and it was argued that it was a compromise solution aimed at creating general legal norms for the functioning of metropolises in general, and not for solving problems specific to a given territory, taking into account the existing forms of cooperation between local governments and the way of organising the performance of public tasks (Moll, 2017, pp. 150–151).

4. Genesis, concept and general evaluation of the Act on the Metropolitan Union in the Silesian Voivodeship

The government formed as a result of the parliamentary elections in 2015 gave up the concept of creating metropolitan unions on a national scale, and focused on adopting legal solutions dedicated exclusively to the Silesian Voivodeship, where intensive activities aimed at strengthening metropolitan ties had been carried out for a decade. In January 2017, a government draft act on the metropolitan union in the Silesian Voivodeship was submitted to the Sejm,[4] which became the basis for the Act on the Metropolitan Union in the Silesian Voivodeship adopted on 9 March 2017.[5]

[3] Journal of Laws of 2017, item 730.
[4] Paper no. 1211 of the Sejm of the 8th term.
[5] Journal of Laws of 2017, item 730.

The specificity of this metropolitan area determined the choice of the location for the first metropolitan union in Poland. It consists of 14 cities with district rights and the surrounding land districts. The specificity is determined by the lack of a dominant central city and the functioning of a dozen or so urban centres of similar size and potential side by side. Its distinctive features are a very high population and housing density, an extensive network of road infrastructure and public transport connections and a large daily migration between the cities of the agglomeration; as well as the degradation of the natural environment related to the development of industry and the exploitation of mineral deposits, as well as the revitalisation of post-industrial areas. It was assumed that a metropolitan union might be established in the area of the Silesian Voivodeship, constituting an association of local municipalities, characterised by the existence of strong functional connections and the advancement of urbanisation processes, located in a spatially coherent area inhabited by at least 2,000,000 inhabitants. This union includes the city with district rights i.e. Katowice. This union is obligatory and the municipalities that are part of it are unable to withdraw from it. The Council of Ministers was authorised to establish the union and determine its area and borders, taking into account the existing forms of cooperation between municipalities that make up the metropolitan union, functional connections and the advancement of urbanisation processes, as well as the settlement and spatial layout, taking into account social, economic and cultural ties in this area. It issued an ordinance on this matter on 26 June 2017, creating a metropolitan union called "the Metropolis of Upper Silesia and Zagłębie".[6]

When establishing the structure of the metropolitan union in the Silesian Voivodeship, the legislator referred to the systemic solutions adopted in the Act on metropolitan unions of 2015, with some necessary modifications. The analysis of detailed legal solutions regulating the principles of operation of the authorities of the metropolitan union allows for the creation of new institutions unknown to Polish local self-government law.

For the first time in Polish law, a solution was adopted that an entity that is not a new local self-government unit, within the meaning of the Constitution of the Republic of Poland, receives its own tasks. The catalogue of the union's obligatory tasks includes public tasks in the following areas: shaping the spatial order; social and economic development of the union area; planning, coordination, integration and development of collective public transport; sustainable urban mobility; and metropolitan passenger transport. The established metropolitan tasks combine elements typical of both local and regional tasks.

The independence of the metropolitan union in determining the internal structure and rules of operation, as well as determining the number of delegates, has been limited. The assembly of the union consists of delegates from the municipalities that make up the union, regardless of their size, one from each municipality. The union board consists of five members and is elected by the assembly in a secret ballot. The assembly of the union adopts resolutions by a double majority of votes, unless the act provides otherwise. This condition is met if both the majority of the statutory composition of the assembly and

[6] Regulation of the Council of Ministers of June 26, 2017 on the establishment of a metropolitan union in the Silesian Voivodeship "the Metropolis of Upper Silesia and Zagłębie", Journal of Laws of 2017, item 1290.

such a number of delegates representing municipalities that the inhabitants of these municipalities constitute the majority of the population living in the area of the metropolitan union vote in favour of the resolution. The adopted solution is to prevent the possibility of resolutions being blocked by municipalities representing a smaller number of inhabitants but which are more numerous in the assembly.

A specific method of financing the activities of the metropolitan union was adopted, ensuring the union receives a share of the income tax of natural persons residing in the area of the metropolitan union (0.2% in the year in which the metropolitan union was established, and 5% in the following years). The catalogue of the union's sources of income includes contributions (fixed and variable) from municipalities included in the metropolitan union. The fixed part of the annual contribution was to constitute 0.1% in the year in which the metropolitan union was established, and 0.5% in subsequent years of income from the participation of the municipality in revenues from personal income tax.

The metropolitan union was granted legal personality, but local communities were not empowered at the same time. It should perform new extra-municipal tasks that have not been performed so far. Although the explanatory memorandum to the draft act described this structure as a kind of experiment, the metropolitan union does not have an official pilot character. This construction was assessed in the literature as innovative, which opens the way to experimentation in public administration in the future (Pyka, 2018, pp. 21–22).

5. The concept and general assessment of other legislative initiatives concerning the system of metropolitan areas (taken by 31 March 2022)

The statutory adoption of the principles of establishing, organising and operationalising a metropolitan union in the Silesian Voivodeship meant abandoning the concept of uniform statutory solutions for all metropolitan areas in favour of adopting, if necessary, separate (subsequent) acts for individual metropolitan areas. From that moment on, a significant increase can be noticed in the submission of various legislative proposals on institutional forms of performing metropolitan tasks.

In December 2016, the parliamentary draft act on the Poznań Metropolitan Union was submitted to the Sejm.[7] It was modelled on the draft act on the metropolitan union in the Silesian Voivodeship and used some solutions adopted in the Act on Metropolitan Unions. It assumed the creation of a metropolitan union that would be an association of municipalities and districts located in the Greater Poland Voivodeship, inhabited by at least 600,000 inhabitants, covering a spatially coherent area of influence of the city with Poznań district rights and characterised by the existence of strong functional connections. This draft act was rejected by the Sejm in the first reading in March 2017. The next three draft acts regarding the establishment of the metropolitan union are dated 2018.

[7] Paper no. 1196 of the Sejm of the 7th term.

In January, a parliamentary draft act on the Wrocław Metropolitan Union was submitted,[8] which would obligatorily include Wrocław (a city with district rights) and, voluntarily, other municipalities and districts located in the Lower Silesian Voivodeship, with a total population of at least 900,000. In September, the parliamentary draft act on the Krakow Metropolitan Union was submitted to the Sejm,[9] which would consist of Krakow (a city with the district status of Krakow) and other municipalities located in the Lesser Poland Voivodeship, inhabited by at least 1,000,000 inhabitants. In March, however, the parliamentary draft act on the metropolitan union in the West Pomeranian Voivodeship was submitted,[10] which would consist of Szczecin (a city with district rights) and municipalities of the West Pomeranian Voivodeship, inhabited by at least 600,000 inhabitants. The solutions proposed in the above-mentioned three draft acts were basically analogous. They assumed entrusting the metropolitan union with carrying out tasks that overspill the administrative boundaries of municipalities, in the field of: planning, coordination, integration and development of public collective transport; shaping the spatial order as well as social and economic development of the area of the metropolitan union. All three draft acts were sent for a first reading, which did not take place until the end of the Sejm's term of office.

In 2020, two more draft acts on the establishment of a metropolitan union were submitted to the Sejm. In February, the Senate's draft act on the Łódź Metropolitan Union was submitted,[11] which would include Łódź (a city with district rights) and other municipalities of the Łódź Voivodeship, inhabited by at least 1,000,000 inhabitants. In September, the Senate's draft act on the metropolitan union in the Pomeranian Voivodeship was submitted to the Sejm,[12] which is to be an association of municipalities and districts of the Pomeranian Voivodeship with a population of at least 1,000,000. It will obligatorily include three cities with district rights – Gdańsk, Gdynia and Sopot, and those districts, where at least half of the municipalities are part of the metropolitan union. The catalogue of tasks planned to be entrusted to the union was the same as in the case of draft acts submitted to the Sejm in 2018. It was extended to include environmental protection tasks. Both draft acts were submitted for their first reading, which did not take place until 30 March 2022.

The proposals for adopting the legal basis for the establishment of metropolitan unions, submitted in the previous and current term of office of the Sejm, partly propose analogous solutions to those adopted for the union in the Silesian Voivodeship. In addition to common elements, one can point to elements specific to the Lower Silesian and Pomeranian concepts, which are based on the establishment of membership of municipalities and districts, which significantly differ from those of the others.

The general description of subsequent draft acts related to metropolitan unions, submitted relatively shortly after the entry into force of the act dedicated to the metropolitan union in the Silesian Voivodeship, which did not lead to their adoption in the

[8] Paper no. 2252 of the Sejm of the 8th term.
[9] Paper no. 2934 of the Sejm of the 8th term.
[10] Paper no. 2428 of the Sejm of the 8th term.
[11] Paper no. 285 of the Sejm of the 9th term.
[12] Paper no. 646 of the Sejm of the 9th term.

form of an act, proves that the Polish legislator is still reluctant to create new metropolitan areas requiring an individualised approach, even in the case of justified needs reported by local self-governments.

6. Summary

These considerations serve to confirm the adopted thesis of a specific compromise between expert assumptions and the will of the legislator with regard to the final normative version of the metropolitan union concept. At the same time, it has been shown that the withdrawal from the introduction of one universal model of a metropolitan union for individual metropolitan areas opens up the possibility of submitting further legislative initiatives aimed at creating new unions, with individualised features that take into account the specificity of particular metropolitan areas.

The presented concepts, assumptions and draft acts, as well as adopted legal solutions, present an evolution in the way of understanding the problems of metropolitan areas. They reveal a diverse approach to the scope of the proposed regulation and the model of the legal status of such areas (ranging from solutions using voluntary forms of cooperation to creating a new category of local self-government units and making changes to the territorial division of the state). There is no doubt that the search for an optimal model for managing metropolitan areas and the need to create an organisational form that would institutionalise the processes by which large urban centres impact on the surrounding municipalities, and after 1998 also on districts, was repeatedly raised in various environments with varying intensity, including also in the course of working on the next stages of public administration reform.

Also in practice, using the forms of cooperation specified by the legislator, the most appropriate way of performing metropolitan tasks was sought (in particular in the fields of spatial planning and development, road authority and public transport). With the emergence of discussions on the status of metropolitan areas and the failure of a top-down creation of metropolitan structures, local self-government structures began to emerge in Poland, based on the voluntary cooperation of municipal and district units. Local self-government legislation in Poland since 1990 has provided legal grounds for intermunicipal cooperation, since 1998 for cooperation of districts, and since 2015 also for municipal and district cooperation. There is a visible bottom-up process of building a coalition of local cities and the surrounding municipalities and districts, which can be described as the beginning of the process of integration of management and planning in functional urban areas.

Neither the establishment of cities with district rights nor other solutions introduced only in a fragmentary manner, enabling the implementation of metropolitan tasks, have solved the specific problems of metropolitan areas (e.g. functional areas, regulated in the Act on Spatial Planning and Development, for which a spatial development plan is adopted or Integrated Territorial Investments [ITI] implemented in the cities that are the seat of voivodeship self-government authorities or a voivode and areas functionally related to them). Despite the creation of organisational and financial instruments supporting the

cooperation of local self-governments in the functional areas (ITI), the adoption of statutory solutions regulating the performance and financing of metropolitan tasks is currently not a priority in Poland, neither for the government nor for the parliament. Contrary to the top-down reform of the state in 1990 and 1998, there is now clear social pressure to organise the management structures of large cities in a democratic rather than technocratic manner.

The long-term process of creating legal regulations regulating the mode and rules of functioning of metropolises is crowned with the entry into force of the Act on the Metropolitan Union in the Silesian Voivodeship. The metropolitan union is *de facto* compulsory. This is evidenced by the statutory procedure for establishing a union and the lack of legal solutions that establish the rules for the withdrawal of municipalities from the union (in practice, this makes it impossible for municipalities to withdraw).

The metropolitan union is a new local self-government institution, but it is not another local self-government unit. It is an organisational unit included in the local self-government sector and the public finance sector, but qualitatively different from the associations of local self-government units, although its legal structure resembles the institution of a municipal union regulated in the local self-government system act. It assumes the cooperation of certain local self-government units existing in the metropolitan area according to the functional formula of the association, with a separate legal personality from its constituent units. The representative bodies of a metropolitan union do not result from general elections, but are composed of delegates from individual local self-government units that make up the union. This means that the union derives its legitimacy from individual local self-government units, and only indirectly from the inhabitants of the metropolitan area.

The idea of a metropolitan union is, first of all, for the legislator to distinguish general metropolitan tasks, stemming both from the role of a metropolitan city as the centre of the union and the need to solve problems caused by the spatial and functional layout of its surroundings. Satisfying the collective needs of the inhabitants of the metropolitan area creates for the metropolitan union a category of its own tasks. Its creation enables such tasks to be implemented in an integrated and coordinated manner. Granting the metropolitan union the category of its own tasks, which until now have been reserved for local self-government units, is an innovative solution for Polish conditions. The creation of sources of income for the metropolitan union by means of an act means that the status of the metropolitan union in terms of budget, compared to the status of classic municipal unions is generally more stable.

The assumptions and draft acts submitted so far, as well as the adopted acts dedicated to the problems of managing public affairs at the metropolitan level, as well as containing detailed institutional and legal solutions, in the vast majority referred to the cooperative model of metropolitan area management and constituted specific modifications to this model. On the one hand, it was proposed to entrust the management of the metropolitan area to an additional metropolitan unit of local self-government, which was to exist next to the already functioning municipalities (cities with district rights). The concept of the metropolitan district, understood as a local self-government community, belongs to this trend, although the various models, prepared at different times, differed in their specific

structural elements. The main difference was to determine whether the metropolitan district is to be the next (fourth) category of local self-government units and constitute an element of the basic territorial division of the state, or to function as another category of a district (next to the land district and the magistrate district, which was referred to in the literature as a city with district rights), without the need to change the basic territorial division of the state. On the other hand, it was planned to appoint a union metropolitan complex with a separate legal personality to manage the metropolitan area, which would include individual local self-government units located in the metropolitan area.

The current legal status in Poland in the field managing of metropolitan areas is characterised by a wide variety of solutions as well as fragmentedness and dispersion in many legal acts. Different metropolitan areas are managed differently, which is determined by both the legislation in force and the practice of its application. Currently – with the exception of Warsaw, organised on the basis of a separate act based on the model of a unified metropolitan authority – the model of cooperative management of such an area in Poland is characteristic of metropolitan areas. The management of metropolitan areas is carried out by local government units (mainly by cities with district rights and neighbouring municipalities), as well as by specific forms of intermunicipal cooperation and, in the case of a metropolitan area in the Silesian Voivodeship, by a metropolitan union (operating under the name of the Metropolis of Upper Silesia and Zagłębie). Granting the Warsaw and Silesian metropolitan area legal instruments dedicated to them by the legislator in practice privileges their position.

The functional-spatial and socio-economic differentiation of metropolitan areas, as well as specific system solutions that regulate the relations between local self-government units in different countries, make it impossible to identify a single, optimal model of metropolitan area management. Compared to many European countries with well-developed forms of metropolitan areas management (for example, Germany, France, Italy and the Netherlands), Poland is still at the beginning of the path of making them important management and planning entities. On the one hand, this was due to historical conditions (including a relatively short period of local self-government functioning) and, on the other hand, legal, administrative and political conditions.

The discussion of the optimal shape of systemic, organisational and financial solutions, taking into account the specificity of the functioning of metropolitan areas, cannot be considered complete. An agreement has already been reached on the choice of a statutory functional solution based on the structure of the metropolitan union and the catalogue of metropolitan tasks, separate for the public tasks of municipalities and districts. However, there is still no universal acceptance of the choice of the nature of the regulation of the metropolitan area management model. The legislator himself quickly changed his position on this matter, departing from the adopted universal solutions in favour of solutions dedicated to a specific area. This may mean the legislator's reluctance to create new metropolitan areas that require an individualised approach, even in the case of justified needs reported by local self-government communities. When adopting new legal solutions and improving the existing ones, it is necessary to take advantage of the negative experiences of the only metropolitan union so far (the Metropolis of Upper Silesia and Zagłębie), in particular related to the system and the rules of functioning and

adopting resolutions by the union's decision-making body. Only the adopted statutory solutions specifying appropriate legal and financial instruments and increasing the participation of the social environment in the public management system may lead to a fundamental qualitative change in the organisation and local development in metropolitan areas and contribute to the improvement of the socio-economic level of large urban centres.

References

Allers, M. A. & de Greef, J. A. (2018). Intermunicipal Cooperation, Public Spending and Service Levels. Local Government Studies, 44(1), 127–150. Online: https://doi.org/10.1080/03003930.2017.1380630

Antkowiak, P. (2016). Poselski projekt ustawy o powiecie metropolitalnym – progres czy regres w reformowaniu samorządu terytorialnego w Polsce? Środkowoeuropejskie Studia Polityczne, 4, 95–110. Online: https://doi.org/10.14746/ssp.2016.4.6

Bakoš, E., Němec, D., Hrůza, F. & Mix, T. (2020). Emerging Topics on Inter-municipal Cooperation in the Czech Republic: Policy Networking, Regionalization and Financial Indicators. Lex Localis – Journal of Local Self-Government, 18(3), 579–602. Online: https://doi.org/10.4335/18.3.579-602(2020)

Balázs, I. (2014). L'intercommunalité en Hongrie. In M. C. Steckel-Assouère (Ed.), Regards croisés sur les mutations de l'intercommunalité (pp. 425–435). L'Harmattan.

Bel, G., Fageda, X. & Mur, M. (2013). Why Do Municipalities Cooperate to Provide Local Public Services? An Empirical Analysis. Local Government Studies, 39(3), 435–454. Online: https://doi.org/10.1080/03003930.2013.781024

Boyer, A. (2012). La cooperation intercommunale en France. Istituzioni del federalismo: Rivista di Studi Giuridici e Politici, 3, 583–598.

Camões, P. J., Tavares, A. & Teles, F. (2021). Assessing the Intensity of Cooperation: A Study of Joint Delegation of Municipal Functions to Inter-municipal Associations. Local Government Studies, 47(4), 593–615. Online: https://doi.org/10.1080/03003930.2020.1857245

Dolnicki, B. (2010). Ustrój metropolii – współczesne koncepcje. Administracja Publiczna. Studia Krajowe i Międzynarodowe, 2, 199–204.

Dolnicki, B. (Ed.) (2018). Formy współdziałania jednostek samorządu terytorialnego. Wolters Kluwer.

Dolnicki, B. (2020). Jeszcze raz w sprawie metropolii. Ruch Prawniczy, Ekonomiczny i Socjologiczny, 82(4), 65–81. Online: http://doi.org/10.14746/rpeis.2020.82.4.6

Edwarczyk, B. (2015). Rozwój obszarów metropolitalnych w świetle transformacji samorządu terytorialnego w Polsce w latach 1990–2014. Ruch Prawniczy, Ekonomiczny i Socjologiczny, 77(3), 303–319. Online: https://doi.org/10.14746/rpeis.2015.77.3.21

Grešová, L. (2016). Towards the Implementation of the Best Practice from Abroad – Strengthening the Cooperation Among Slovak Municipalities. Acta Regionalia et Environmentalica, 13(2), 35–40. Online: https://doi.org/10.1515/aree-2016-0008

Hoffman, I., Fazekas, J. & Rozsnyai, K. (2016). Concentrating or Centralising Public Services? The Changing Roles of the Hungarian Inter-municipal Associations in the Last Decades. Lex Localis – Journal of Local Self-Government, 14(3), 451–471. Online: https://doi.org/10.4335/14.3.451-471(2016)

Hulst, R. & van Montfort, A. (2007). Inter-municipal Cooperation: A Widespread Phenomenon. In R. Hulst & A. van Montfort (Eds.), Inter-municipal Cooperation in Europe. Springer. Online: https://doi.org/10.1007/1-4020-5379-7_1

Ignasiak-Szulc, A. (2009). Dylematy „dekretowania" zasad wspierania procesu metropolizacji w Polsce. Ekonomiczne Problemy Usług, 30, 65–66.
Izdebski, H. (2010). Zadania metropolitalne i instytucjonalne sposoby ich realizacji. Samorząd Terytorialny, 6, 62–68.
Izdebski, H. (2014). Samorząd terytorialny. Podstawy ustroju i działalności. Wolters Kluwer.
Izdebski, H. (2015). Ustrój Warszawy a ustrój metropolii europejskich. Samorząd Terytorialny, 3, 75–86.
Jaworska-Dębska, B. (2017). O istocie związków metropolitalnych. In B. Jaworska-Dębska (Ed.), O prawie administracyjnym i administracji. Refleksje. Księga jubileuszowa dedykowana Profesor Małgorzacie Stahl. Wydawnictwo Uniwersytetu Łodzkiego.
Kieres, L. (1994). Uwagi o projekcie z dnia 29 lipca 1993 r. ustawy o samorządzie powiatowym. In R. Sowiński (Ed.), Dyskusja o powiatach. Tom II „Projektowanie ustawodawstwa powiatowego" cz. 1. KIBS.
Knosala, E., Gołuch, A. & Stasikowski, R. (2007). Uwagi w sprawie koncepcji ustrojowej aglomeracji Śląskiej wraz z projektem ustawy o Regionalnym Związku Komunalnym „Silesia". Samorząd Terytorialny, 12, 45–54.
Kołsut, B. (2015). Zinstytucjonalizowane sieci współdziałania międzygminnego w Polsce. Bogucki Wydawnictwo Naukowe.
Krukowska, J. & Lackowska, M. (2017). Metropolitan Colours of Europeanization. Institutionalization of Integrated Territorial Investment Structures in the Context of Past Cooperation in Metropolitan Regions. Raumforschung und Raumordnung, 75(3), 275–289. Online: https://doi.org/10.1007/s13147-016-0447-y
Marotta, M., Bolgherini, S. & Casula, M. (2018). Il dilemma del riordino. Unioni e fusioni dei comuni italiani. Il Mulino.
Matschek, M. (2011). Interkommunale Zusammenarbeit. Recht & Finanzenfur Gemeinden, 2, 11–94.
Ministerstwo Administracji i Cyfryzacji. (2013). Biała księga obszarów metropolitalnych. Warszawa.
Moll, T. (2017). Ustawa o związkach metropolitalnych – rozwiązanie słuszne czy kompromisowe? Przegląd Prawa Publicznego, 7–8, 149–151.
Niziołek, M. (2007). Problemy ustroju aglomeracji miejskich (ze szczególnym uwzględnieniem Warszawy). Wolters Kluwer.
Ofiarska, M. (2017). Supervision of the Metropolitan Union's Financial Issues in Poland. Acta Universitatis Brunensis. Iuridica, Editio Scientia, 580, 156–171.
Ofiarska, M. (2022). Determinants and Directions of Evolution of Intermunicipal Cooperation Forms: From the Perspective of 30 Years of Experience in the Creation of Municipal Associations in Poland. Journal of Eastern Europe Research in Business and Economics, 2022, 1–16. Online: http://doi.org/10.5171/2022.349212
Ofiarska, M. & Ofiarski, Z. (2021). Związki komunalne i metropolitalne w Polsce. Wolters Kluwer.
Pyka, R. (2018). Górnośląsko-Zagłębiowska Metropolia jako innowacja w samorządzie terytorialnym. Szanse i wyzwania pierwszego w Polsce Związku Metropolitalnego. Studia Regionalne i Lokalne, 71(1), 1–25. Online: http://doi.org/10.7366/1509499517101
Rakar, I., Tičar, B. & Klun, M. (2015). Inter-municipal Cooperation: Challenges in Europe and in Slovenia. Transylvanian Review of Administrative Sciences, 45, 185–200.
Da Silva, D. P., Silvestre, H. C. & Embalo, A. A. (2020). Inter-municipal Cooperation in Brazil: The Case of Solid Waste Consortia. Revista de Administração Pública, 54(5), 1239–1259. Online: http://dx.doi.org/10.1590/0034-761220180151x
Spicer, Z. (2015). Cooperation and Capacity: Inter-municipal Agreements in Canada. IMFG Papers on Municipal Finance and Governance, 19, 1–31.
Steiner, R. & Kaiser, C. (2018). Inter-municipal Cooperation in Switzerland. In F. Teles & P. Swianiewicz (Eds.), Inter-municipal Cooperation in Europe: Institutions and Governance (pp. 173–187). Palgrave Macmillan. Online: http://doi.org/10.1007/978-3-319-62819-6_9

Stork, M. (2012). Interkommunale Zusammenarbeit und mehrstufige Aufgabenwahrnehmung: eine Analyse von Organisationsmodellen für Pflichtaufgaben im kreisangehörigen Raum. Kohlhammer Deutscher Gemeindeverlag.

Swianiewicz, P. & Teles, F. (Eds.) (2018). Intermunicipal Cooperation in Europe. Institutions and Governance. Palgrave Macmillan.

Szlachetko, J. H. & Gajewski, R. (2016). Instytucjonalne formy współdziałania jednostek samorządu terytorialnego na obszarach metropolitalnych. Wydawnictwo Uniwersytetu Gdańskiego.

Szlachetko, J. (Ed.) (2021). W poszukiwaniu inspiracji. Metropolie w ujęciu porównawczym. Wydawnictwo Uniwersytetu Gdańskiego.

Szydło, M. (2018). Wyzwania legislacyjne w zakresie zarządzania obszarami metropolitalnymi w Polsce. Przegląd Prawa i Administracji, 114(3833), 387–409. Online: http://doi.org/10.19195/0137-1134.114.25

Teles, F. (2016). Local Governance and Inter-municipal Cooperation. Palgrave Macmillan. Online: https://doi.org/10.1057/9781137445742

Warner, M., Austin, A. & Yunji, K. (2021). Privatization and Intermunicipal Cooperation in US Local Government Services: Balancing Fiscal Stress, Need and Political Interests. Public Management Review, 23(9), 1359–1376. Online: https://doi.org/10.1080/14719037.2020.1751255

Wiberg, U. & Limani, I. (2015). Intermunicipal Collaboration – A Smart Alternative for Small Municipalities? Scandinavian Journal of Public Administration, 19(1), 63–82.

Yurisch, A. K., Soto, K. & Fuenzalida, C. R. (2019). Inter-municipal Cooperation in Latin America: Current Situation and Future Research Challenges. Revista de Administração Pública, 53(3), 575–591. Online: http://dx.doi.org/10.1590/0034-761220180042x

Contents