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Why We Obey – and Disobey – The Law

How to measure the impact of law on behavior.
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In 1974, the California Supreme Court declared that a University of California psychiatrist had a duty to warn authorities that a student expressed an urge to kill his girlfriend. Arguing that many patients would not seek help without a guarantee of confidentiality, psychiatrists, psychologists and social workers petitioned the court to reconsider its decision. Surprisingly, the justices agreed. In 1976, the court modified its ruling, decreeing that rather than an absolute duty to warn, therapists must use “reasonable care” to protect people threatened by patients.

A subsequent study revealed that a high percentage of mental health specialists knew about the case and changed their behavior in light of it. Many of them, however, were misinformed. Unaware of the second decision, they thought they now had a duty to warn. They did not realize that the decision was binding only in California. And few could provide a legal definition of “reasonable care.”

*Tarasoff v. Regents of the University of California*, Lawrence Friedman, a professor of law at Stanford University, indicates, may well have changed the behavior of therapists and
patients. One economist made the startling claim that the decision (indirectly) increased the murder rate by 5%!

Tarasoff, Friedman suggests, underscores the importance – and difficulty – of measuring how law affects behavior. In Impact, he draws on empirical studies and theoretical work in law and society, psychology, sociology, behavioral economics, and other disciplines to examine the conditions under which laws and rules are actually effective. Once a law is communicated, he argues, responses will be shaped by rewards and punishments; peer group influence, and internal motivation. Since human behavior “is incredibly and incurably complex,” and varies with time, place, and culture, Friedman points out, overarching generalizations are certain to be inaccurate. That said, his book provides a superb framework for understanding the factors, and clusters of factors, that influence the responses of individuals and groups to acts within the legal system.

Consider, for example, Friedman’s analysis of deterrence. Punishment or the threat of punishment can be powerful deterrents, he acknowledges. After all, we tend not to exceed the speed limit when we see a police car on the highway. And many of us take into account the likelihood of an IRS audit of our income taxes. That said, the impact of deterrence is often limited. Deterrence assumes an understanding of the law’s provisions and rational calculation. Murder, however, is usually a crime of passion; many burglars and armed robbers have affirmed that they did not think much about the risks. Certainty (the likelihood of getting caught), Friedman suggests, may deter more than the severity of the stipulated punishment. Think jaywalking or littering.

And a lot depends on perceptions. Professional and amateur criminals, Friedman notes, have vastly different perceptions of risks. College students feel their chances of getting arrested for DWI are small – and often do not know how the law defines “drunk.” Those who do not smoke marijuana think it more likely they will get arrested than those who do. To complicate things further, social scientists are not at all certain whether behavior molds perceptions or perceptions mold behavior. And, let’s face it, perceptions are often wrong: the number and result of malpractice cases has been exaggerated by publicity, which may have a substantial effect on the perceptions (and behavior) of doctors and their patients.

Friedman reminds us as well that a sense of fairness and morality, individual and cultural, has a significant impact on obedience to the law. United Nations representatives from the United Kingdom, Australia, Ecuador, Israel, and Jamaica, tend to pay fines for illegal parking, despite their diplomatic immunity, while those from countries with a reputation for corruption (Kuwait, Egypt, Chad and the Sudan) tend to ignore them. Religious beliefs, traditional customs, patriotism, “even superstitions,” Friedman writes, play perhaps the most powerful role of all in determining the impact of law. And, as the Tarasoff case demonstrates, lawyers, doctors, teachers and other professionals sometimes adhere to codes of conduct, even when they are in conflict with specific laws.

And the plot thickens even more, according to Friedman, when we realize that the factors he cites often conflict with one another. For this reason alone, it seems clear that no law and no rule will be obeyed all the time by every citizen. This daunting reality, Friedman concludes, should
serve as a reminder that we cannot accurately gauge impact by relying on forms, norms or rational choice theory. Instead, we must study “the lived experience of the law,” by watching “people at work and trying to understand what makes them tick.”

The behavioral approach, to be sure, will not now allow us put it all together in a grand synthesis, but, as Friedman claims, it is “at least a beginning.” His book is an insightful, important and impactful one at that.