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Traffic Justice: Law and Society on the Roads of Iran and the Netherlands

MARC HERTOOGH

I. INTRODUCTION

IN *DRIVING CULTURE in Iran: Law and Society on the Roads of the Islamic Republic*, Reza Banakar (2016) and his collaborators skilfully guide us through everyday life in contemporary Iran. The country has one of the highest rates of road traffic incidents worldwide. The book convincingly argues that ‘the driving habits of Iranians, their disregard for traffic laws and their attitude to the rights of other drivers are themselves indicators of how their social identities and relations are forged [...] and, ultimately, how Iranian society is organized’ (Banakar 2016: 2). In addition, Banakar uses urban traffic as a social laboratory to study the holy grail of law and society research: why do people follow or ignore the law? Previous studies have often claimed that people only comply with legal rules because they fear punishment or because compliance is in their best interest (see, eg, Hyde 1983; Pratt et al 2006). Banakar, by contrast, argues that compliance is also shaped by the perceived legitimacy of law. In his view, Iranian (external) legal culture – in this case understood as Iranians’ ‘experiences of traffic rules, law and legality’ (Banakar 2016: 34) – determines whether people obey the law. Or, in his own words, ‘the concept of legal culture could be used to describe why the majority of people normally follow certain laws or to explain why they collectively ignore them, as in the widespread disregard for traffic rules in Iran’ (ibid: 10) This chapter will examine this claim by comparing law and society in Iran and in the Netherlands.

First, I will discuss the main findings from international traffic research (section II). These studies focus on two possible explanations for compliance behaviour. The first explanation is based on an ‘instrumental’ approach and emphasises the importance of deterrence. The second explanation is based on a ‘normative’ approach and emphasises the importance of legitimacy. I will use this conceptual framework to analyse the main findings from Banakar’s study (section III). Next, I will compare these findings from Iran with the outcomes of a study on compliance with traffic rules in the Netherlands (section IV). The cultural and legal context in both countries is, of course, very different. Also, contrary to the situation in Iran, traffic in the Netherlands

is characterised by a high level of legal compliance. However, a comparison between two ‘extreme cases’ is the best approach to achieve a more in-depth understanding of the nature of the phenomenon under study (see Jahnukainen 2010). Based on the comparison between Iran and the Netherlands, I will discuss three general lessons about legal compliance (section V). In the conclusion, I will reflect on the wider significance of Reza Banakar’s scholarship (section VI).

II. TRAFFIC RESEARCH

Why do people obey the law? Banakar (2016) discusses two possible answers. First, he shows that both in the literature and in everyday practice there is a ‘strong belief in penalties as a deterrent’ (ibid: 69). However, sanctions may not always be enough. Building on Habermas’ (1975; 1984) distinction between the ‘legal system’ and the ‘lifeworld’, Banakar (2016: 187) argues that ‘modern liberal law continues to require a degree of legitimacy and moral justification for the way in which it administers society – a form of legitimacy that it can obtain only by maintaining a link with the lifeworld’. Both approaches – deterrence and legitimacy – also play an important role in a growing body of research on compliance with traffic rules among road users.

A. Instrumental and Normative Models of Compliance

Socio-legal traffic research is often based on Tyler’s procedural justice model. Tyler (1990) distinguishes between two different perspectives on regulatory compliance: an ‘instrumental’ and a ‘normative’ approach. According to the ‘instrumental’ approach: ‘people are viewed as shaping their behavior to respond to changes in the tangible, immediate incentives and penalties associated with following the law’ (ibid: 3). This perspective has long dominated the literature on compliance. By contrast, Tyler is more interested in the ‘normative’ approach. This approach is concerned with ‘the influence of what people regard as just and moral as opposed to what is in their self-interest’ (ibid: 3). In other words, ‘[i]f people view compliance with the law as appropriate because of their attitudes about how they should behave, they will voluntarily assume the obligation to follow the rules’ (ibid: 3).

An important element of the ‘normative’ perspective is the idea that people’s positive attitudes and opinions about the legitimacy of the authorities will have a positive influence on compliance. To test this idea, Tyler has conducted two surveys of the general population of Chicago. These surveys focused on a range of laws that people deal with in their everyday lives. These laws prohibited six forms of behaviour: making enough noise to disturb the neighbours; littering; driving a car while intoxicated; driving faster than the speed limit; taking inexpensive items from stores without paying; and parking illegally. Tyler examined legitimacy in two ways. First, by measuring the ‘perceived obligation to comply with the directives of an authority, irrespective of the personal gains and losses associated with doing so’ (ibid: 27). And second, by measuring the extent to which ‘authorities enjoy the public’s support, allegiance and confidence’ (ibid: 28).

Tyler concluded that legitimacy has a significant and independent effect on the level of self-reported compliance (even when other potential causal factors are controlled for). By contrast, deterrence and the risk of punishment have no significant effect on compliance. To quote the jacket of his book, Tyler (1990) argued that ‘people comply with the law not so much because they fear punishment as because they feel that legal authorities are legitimate and that their actions are generally fair’. The final part of this citation also emphasises a second important dimension of Tyler’s work. He not only found that legitimacy shapes compliance, but also that the level of (perceived) legitimacy is influenced by the perceived procedural fairness of law enforcement authorities.

B. Three Examples: Scotland, Australia, Ghana

Tyler’s model has been applied to analyse compliance with traffic rules in a number of countries, including Scotland, Australia and Ghana. Bradford et al (2015) have conducted a survey among 816 motorists in Scotland. Their study was designed to analyse the effects of an experiment in which a group of police officers used a new approach to communicate procedural justice during routine checks. They found that ‘experience of procedural justice during encounters with officers appeared to enhance perceptions of police legitimacy’ (ibid: 183). Moreover, their findings support ‘the idea that there are both instrumental and norms-based “pathways” to compliance with traffic laws’ (ibid: 184). In a similar study, Bates et al (2016) have held a survey among 237 young novice drivers in Australia. They focused on how four elements of procedural justice (voice, neutrality, respect and trustworthiness) were perceived in relation to two forms of speed enforcement: average speed and mobile speed cameras. They found ‘a significant relationship between perceptions of procedural justice [...] and self-reported speeding behavior’ (ibid: 40). Finally, Tankebe et al (2019) have examined traffic violations and cooperative intentions among a sample of 415 commercial vehicle drivers in Ghana. Their study found that personal corruption experiences increased the frequency of self-reported violations of traffic laws. They also found that perceived police fairness significantly increased the likelihood of cooperation with the police (but there was no effect on self-reported compliance).

C. What about Law?

Although Tyler’s approach has been very influential, it has also been criticised. As indicated above, Tyler (1990) considered only two elements of legitimacy: the ‘perceived obligation to obey the law’; and the level of ‘support for legal authorities’. However, several critics have argued that this operationalisation of legitimacy is too limited (Murphy et al 2009; Murphy and Cherney 2010; Murphy and Cherney 2012). According to Murphy et al (2009: 1), ‘previous research on procedural justice and legitimacy has examined legitimacy in a limited way by focusing solely on the perceived legitimacy of authorities and ignoring how people may perceive the legitimacy of the laws and rules they enforce’. Although an authority itself may be seen to

have legitimate authority, the rules and laws it tries to enforce may be seen to be illegitimate. Following this criticism, this chapter will expand the concept of legitimacy. In addition to *institutional legitimacy* (the ‘perceived obligation to obey the law’) and *personal legitimacy* (‘support for legal authorities’), we will also consider *legal legitimacy* (Crawford and Hucklesby 2013: 2). This third element focuses on the perceived legitimacy of the rules and norms the authorities try to enforce.

To analyse the role of legitimacy, Tyler (1990) also included several other potential motives for compliance, including deterrence, personal morality, peer opinion and procedural justice (as well as several demographic control variables). The next two sections will use this conceptual framework to study compliance with traffic rules among road users in Iran and the Netherlands.

III. LAW AND SOCIETY ON THE ROADS OF IRAN

While most studies that were cited in the previous section are based on surveys, Banakar (2016) has used a qualitative approach. His study is based on over 70 hours of interviews with lawyers, taxi drivers, insurance managers and medical doctors in Shiraz and Teheran. Based on this material, Banakar discusses many different reasons why Iranians follow or (more typically) ignore traffic laws. In this section, these findings will be organised, using the analytical framework (and the variables) from traffic research. I will use fragments from the interviews with Iranians to illustrate ‘the words, ideas, images, concepts and terms they use to problematise the traffic situation, reckless driving, the law and law enforcement’ (Banakar 2016: 35).

A. Reasons for (Non) Compliance

i. Deterrence

First and foremost, Iranians have a ‘strong belief in penalties as a deterrent’ (ibid: 69). According to the interviewees the most likely explanation for the lack of compliance with traffic rules in their country is the absence of strict enforcement:

As long as the rules are not enforced forcefully, very few people will take them seriously and follow them. (ibid: 91)

ii. Personal Morality

Some of the interviewees also suggest that it is important to consider people’s own feelings about what is right and wrong. In their view, many Iranians do not feel that it is wrong to break the law:

Iranians do not experience the rules of traffic as morally binding. (ibid: 101)

All they [the drivers] care about is driving their cars. They pay no attention to traffic signs. (ibid: 50)

iii. Peer Opinion

The interviewees explain that their friends and family usually do not disapprove of non-compliance with traffic rules:

In our society lawlessness is tolerated. Breaking the law doesn't cause a person's fall from grace. Far from it, in traffic, if someone breaks the law [...] other drivers will not treat his conduct disapprovingly; instead, they will follow his example. (ibid: 99)

iv. Procedural Justice

Many Iranians also complain about the arbitrary enforcement of traffic rules. The interviewees feel that they are not treated fairly and they experience a lack of procedural justice:

The law doesn't see or treat everyone in the same way. (ibid: 50)

The enforcement is entirely selective here, which means that if our traffic officers dislike someone they penalize them. (ibid: 79)

v. Institutional Legitimacy

Signalling a low level of institutional legitimacy, the interviewees indicate that they do not feel obliged to follow the law:

The arbitrariness of the law turns ordinary people away from the law. (ibid: 51).

Law doesn't mean a thing. It has no meaning for our people. (ibid: 142)

vi. Personal Legitimacy

During the interviews, many Iranians also indicate that the overall level of respect and support for the police and other state authorities is fairly low:

Iranians do not trust their rulers ... and therefore they do not submit to the laws imposed on them by their rulers. (ibid: 106)

The distrust of authorities, coupled with disregard for state law and the rights of others, lay the social foundation upon which Iranian legal culture rests. (ibid: 197)

vii. Legal Legitimacy

The perceived level of legal legitimacy is not very high either. Many of the interviewees do not accept the authority of traffic rules:

You know, the traffic rules aren't taken seriously by most drivers Driving to Iranians means pressing the gas pedal, it isn't about knowing the traffic rules or following the traffic signs. (ibid: 43-44)

Iranians 'have no respect for the law ...'. (ibid: 98)

viii. Background Variables

Finally, the level of compliance with traffic rules is also influenced by a number of socioeconomic and demographic characteristics of motorists, such as class, gender and age. Some Iranians suggest, for example, that younger drivers are more reckless than older drivers.

B. What Moves Drivers in Iran?

All these reasons for (non)compliance are considered equally important and it is not always clear how they are related. Yet, Banakar focuses on two findings in particular. First, most interviews only point to a limited effect of deterrence. This confirms the experience of some of the male taxi drivers:

The new increased fines have perhaps had an impact on thirty per cent of drivers, amongst those who have received their driving license more recently. But the drivers haven't changed their ways. (ibid: 69–70)

Second, Banakar's study also shows that legal compliance is shaped by people's own sense of justice and the perceived legitimacy of law:

Iranians are not law-abiding in so far as they do not readily follow the laws of the State, but they do regard themselves as the source of law and follow a 'personal' set of norms of rules. (ibid: 203)

IV. LAW AND SOCIETY ON THE ROADS OF THE NETHERLANDS¹

To analyse which factors influence compliance with traffic rules in the Netherlands, survey data were collected from a stratified random sample of 1,182 Dutch traffic offenders.² The survey focused on five types of offences: (i) speeding; (ii) ignoring a red traffic light; (iii) illegal parking; (iv) driving a car while intoxicated; and (v) using a mobile phone while driving. The 10-page survey examined a range of issues, including views about Dutch traffic laws, attitudes and beliefs about the Dutch Central Fine Collection Agency (CJIB) and the police, and their personal experiences with legal authorities.

A. Reasons for (Non) Compliance

Because our sample included only traffic offenders, we could not distinguish between those people who did and those who did not break the law. Our scale for self-reported compliance behaviour builds on a scale previously used by Murphy et al (2009) in

¹Parts of his section draw from and build on Hertogh (2015).

²For methodological details of this study, see Hertogh (2015).

their study of tax offenders in Australia. Following their example, traffic offenders in our study were asked a series of six questions about how they thought the traffic ticket had affected their behaviour. All responses to the six items were reverse scored to form the traffic rules compliance score. A higher score indicates greater compliance. In general, the self-reported level of compliance among most respondents is quite high, with an average score of 2.41 (on a scale from 0–3). Those offenders who were booked for drunk driving report the highest score (2.56) and those who were caught for the use of a mobile phone report the lowest score (2.32).

i. Deterrence

Deterrence was measured with five items: ‘If you did each of the following things, how likely do you think it is that you would be arrested or cited by the police?’ (see Tyler 1990: 188). The respondents were asked to answer this question for all five selected offences. The answers were given on a four-point scale (0 = ‘very likely’ to 3 = ‘not at all likely’), with a higher score indicating lower perceptions of deterrence ($\alpha = 0.84$). Nearly three quarter of all respondents think that it is (somewhat or very) likely that they would be cited or get arrested for illegal parking (72.0 per cent) and speeding (70.6 per cent). However, these numbers are lower for driving while intoxicated (61.1 per cent). About one out of every six respondents (17.9 per cent) thinks that it is not likely at all that they will get caught for this offence.

ii. Personal Morality

Personal morality was measured with five items: ‘Think about your own feelings about what is right and wrong. How wrong do you think it is to do each of the following things?’ (see Tyler 1990: 190). The respondents were asked to answer this question for all five selected offences. The answers were given on a four-point scale (0 = ‘very wrong’ to 3 = ‘not wrong at all’). A higher score on this scale reflects those who perceive these offences as less wrong ($\alpha = 0.69$). All respondents (very) strongly disapprove of drunk driving and ignoring a red traffic light. Of all respondents 90.9 per cent feel that drunk driving is (very) wrong; and 70.2 per cent feel that ignoring a red traffic light is (very) wrong. However, these scores are much lower for illegal parking (16.9 per cent feel this is very wrong) and for speeding (16.1 per cent).

iii. Peer Opinion

Peer opinion was measured with five items: ‘Think about the five adults that you know best. If you got a fine or got arrested for doing each of the following things, how much would they disapprove or feel that you had done something wrong?’ (see Tyler 1990: 189). The respondents were asked to answer this question for all five selected offences. The answers were given on a four-point scale (0 = ‘very much disapprove’ to 3 = ‘not at all disapprove’). A higher score on this scale reflects lower perceptions of peer disapproval ($\alpha = 0.73$). A majority of our respondents think that their peers would (very) strongly disapprove of drunk driving (73.8 per cent); and ignoring a red light

(52.6 per cent). However, these scores are somewhat lower for speeding (42 per cent) and much lower for illegal parking (19.3 per cent).

iv. Procedural Justice

Procedural justice towards the CJIB was measured with two items: 'I feel that I was treated fairly by the CJIB'; and 'I feel that the procedures used by the CJIB were fair' (see Murphy et al 2009: 25). The answers were given on a four-point scale (0 = 'completely disagree' to 3 = 'completely agree'), with a higher score indicating greater perceptions of procedural justice towards the CJIB ($\alpha = 0.91$). More than half of our respondents (strongly) agree that they were treated fairly by the CJIB (54.6 per cent). Almost half of all our respondents (strongly) agree that the procedure at the CJIB was fair (48.7 per cent).

v. Institutional Legitimacy

Institutional legitimacy was measured with six items (eg 'People should obey the law even if it goes against what they think is right') (see Tyler 1990: 187). The answers were given on a four-point scale (0 = 'completely disagree' to 3 = 'completely agree'). A higher score on this scale reflects those who perceive a larger obligation to obey the law ($\alpha = 0.78$). A large majority of our respondents (85.2 per cent) feel that 'people should obey the law even if it goes against what they think is right'. About two thirds (63.2 per cent) feel that 'disobeying the law is seldom justified'.

vi. Personal Legitimacy

Personal legitimacy was measured with four items (eg 'I have a great deal of respect for the police') (see Tyler 1990: 183). The answers were given on a four-point scale (0 = 'completely disagree' to 3 = 'completely agree'), with a higher score indicating greater support for the police ($\alpha = 0.86$). Most respondents (strongly) agree with the statement 'I feel that one should support the police' (78.2 per cent). However, a smaller number of respondents indicate that they 'trust the police' (52.4 per cent).

vii. Legal Legitimacy

Legal legitimacy was measured with ten items, some of which related to specific traffic laws (eg 'You should always stop for a red traffic light, even if it's on a deserted crossing at midnight') (see Murphy et al 2009: 25) while some related to the law in general (eg 'My own feelings about what is right and wrong usually agree with most laws in our country') (see Murphy and Cherney 2012: 200). The answers were given on a four-point scale (0 = 'completely disagree' to 3 = 'completely agree'). A higher score on this scale reflects those who see laws more legitimate ($\alpha = 0.65$). Two thirds of all respondents (66.4 per cent) feel that, 'if circumstances allow it, it is all right to drive faster than the speed limit'. Also, a majority (55.3 per cent) think that 'good driving is more important than always following traffic rules'. In more general terms, about two thirds (62.8 per cent) agree that 'my own feelings about what is right and wrong usually agree with the laws of our country'.

viii. Background Variables

Finally, our study also included a number of socioeconomic and demographic variables for controlling purposes. Respondents in our sample are mostly male (71 per cent), 'with a Dutch background' (77.7 per cent) and between 14 and 88 years of age ($M = 43.1$; $SD = 15.0$). Moreover, 42.2 per cent have received a university or a higher vocational education and 23.6 per cent earn an annual income over €50,000.

B. What Moves Drivers in the Netherlands?

A first statistical analysis of the survey results shows that those with high scores for all three types of legitimacy were also more likely to report a high level of compliance.³ This holds true for institutional legitimacy, personal legitimacy and legal legitimacy. Similarly, procedural justice was positively correlated with self-reported compliance. A regression analysis further confirmed these findings. A multiple linear regression analysis was performed using instrumental and normative motives as predictors of 'self-reported compliance'.⁴ In this analysis, the relation between legitimacy and self-reported compliance was found to be significant. Those offenders who perceive the laws to be highly legitimate were more likely to comply with traffic rules. The same holds true for those offenders who show a high level of support for the police; as well as for those who strongly feel that they have an obligation to obey the law. Moreover, those offenders with a greater perception of procedural justice towards the CJIB were also more likely to comply. Those offenders who do not feel that committing a traffic offence is wrong were less likely to comply with traffic laws. Finally, this analysis also shows that several variables have no significant effect on compliance. Those offenders with a high or low perception of deterrence were not more or less likely to comply with traffic rules. The same holds true for those with high or low perceptions of peer disapproval. Most background variables have no effect on compliance either.

V. DISCUSSION: WHY DO PEOPLE FOLLOW OR IGNORE THE LAW?

Which general conclusions can we draw from these studies in Iran and the Netherlands? Needless to say, that – in cultural, political and legal terms – the two countries could not be more different. This is also reflected in the findings from both studies. While Iran is characterised by a low level of compliance with traffic laws and a corresponding low score on nearly all indicators; the Netherlands has a high level of compliance with traffic laws and a fairly high score on most indicators. However, comparing these two 'extreme cases' is very useful for highlighting 'the most unusual variation in the phenomena under investigation' and to achieve 'a more in-depth understanding of the nature of the phenomenon under study' (Jahnukainen 2010: 378).

³ Table 1 (Hertogh 2015: 221).

⁴ Table 2 (Hertogh 2015: 225).

The comparison between Iran and the Netherlands points to three important reasons why people follow or ignore the law.

A. Instrumental and Normative Motives

As Bradford et al (2015: 172) have argued, '[p]erhaps more than other aspects of legal regulation, the enforcement of traffic laws is premised on an instrumental model of human behavior'. However, the empirical evidence from both Iran and the Netherlands shows that the effect of sanctions on compliance with traffic rules is limited. Moreover, both studies demonstrate that people's own views on what is just and moral also play an important role in shaping compliance with traffic rules. In other words, the empirical evidence from both Iran and the Netherlands supports the key finding from previous traffic research that 'while [...] instrumental concerns about effective policing and the risk of sanctions play some small role in shaping intentions to comply with the law, normative factors are stronger predictors' (ibid: 174).

B. Legal Legitimacy Shapes Legal Compliance

In addition, the evidence from Iran and the Netherlands shows that people's perceptions of legitimacy are not only related to their views and attitudes about institutions or officials, but also to their views and attitudes about law. Previous research has been criticised for focusing on people's opinions about law and neglecting how their views are reflected in their behaviour. As Abel (2010: 18) has noted in a review of four decades of law-and-society-research: 'Opinions about legal institutions, processes and rules, and events divorced from daily life may be easy to elicit through closed-ended questionnaires, but their meaning is opaque'. In his view, '[w]e need to know whether belief in law's legitimacy makes people more willing to comply against self-interest'. In response to Abel's criticism, the research in Iran and the Netherlands demonstrates how legal legitimacy shapes legal compliance.

C. Congruence Between State Law and Living Law

Finally, the studies in Iran and the Netherlands show that an important dimension of the perceived legitimacy of law is the level of congruence between state law and living law. This is most clearly illustrated in Iran. Banakar (2016: 198) concludes that '[t]he historical rift between state and society, and subsequently between cultural practices of the people and state law, continues to define Iranian society'. In Banakar's (ibid: 184) view, '*urf* [a collection of unwritten local rules and norms] is embodied in the culture of ordinary people and survives as their "living law", distinct from the norms that express the State's political expediency'. This is also clearly reflected in many of the interviews. As one civil servant explains: '*urf* is more powerful than laws and ordinances made in Parliament' (ibid: 43). To some extent, the tension between state

law and people's own ideas of law and justice is also present in the Dutch study. For example, one third (30 per cent) of the survey respondents thinks that the laws in the Netherlands do not correspond with their own norms and values.

VI. CONCLUSION

Banakar's brilliant study of driving culture in Iran shows that urban traffic is a good laboratory to study law in everyday life. His book not only explores Iranian legal culture, but it also helps us to answer one of the key questions in law and society research: why do people follow or ignore the law? Although many legal scholars and policymakers still support an instrumental model of compliance, evidence from both Iran and the Netherlands strongly suggests that the effect of sanctions and deterrence is limited. Instead, both studies show that people comply with the law if and when they feel that legal authorities are legitimate and their actions are generally fair. In addition, people's perceptions of legitimacy are not only related to their views and attitudes about institutions or officials, but also to their views and attitudes about law.

A common trend in many of the interviews with Iranians is their mistrust of the legal system. As one medical doctor explains: 'In the same way that [Iranians] hope to avoid ending up in a hospital, they also hope not to come into contact with the law' (Banakar 2016: 108). Although both countries are very different, this is also a valuable lesson for the Netherlands. In times of growing legal alienation in Europe (Hertogh 2018), Iran is the proverbial canary in the coal mine. In this way, Reza Banakar's work not only reminds us of a great scholar who will be dearly missed, but his scholarship also serves as a constant reminder to politicians and lawmakers that law can only retain its legitimacy if it maintains a connection with the lifeworld of its citizens.

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