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Do People Know the Law? Empirical Evidence about Legal Knowledge and Its Implications for Compliance

Benjamin van Rooij

Abstract: Legal knowledge is a core aspect in compliance. For law to shape behaviour, people whose conduct the law tries to influence should know the law. This chapter reviews the body of existing empirical research about legal knowledge. It assesses the extent to which laypersons and professionals know and understand legal rules across various domains including employment, family affairs, criminal justice, education and health care. This body of work shows that ignorance and misunderstanding of the law are common across these domains. There is variation and for some laws, amongst some people and in some jurisdictions, there is more or less legal knowledge. Also, the review shows that there is evidence that people tend to equate their own norms with the rules of the law. The chapter concludes by discussing what these findings mean for compliance and the way our laws try to steer human and organisational conduct. Here it questions compliance approaches that view it as a linear process from rule to behaviour.

32.1 INTRODUCTION

Compliance, ultimately, is about how legal rules get to shape behaviour. The most common, yet often implicit, conception of compliance involves a linear process: lawmakers develop rules; such rules are made public and enforced; people learn about these rules and the way they are implemented; they weigh the costs and benefits of obeying or breaking the rules; and they decide how to respond.

Within this process, a core element is that people get to learn the rules. And, thus, legal knowledge, indicating that regulated subjects have knowledge and understanding of the rules that seek to influence their behaviour, is a core aspect of compliance. Yet, so far in the discussion on compliance, legal knowledge has not featured centrally. Darley, Carlsmith and Robinson are an important exception, as their study of people's knowledge of criminal law directly asks the question of what legal knowledge means for the so-called '*ex ante* function of law', where law, rather than responding to bad behaviour from the past (*ex post*), tries to alter future conduct (Darley, Carlsmith and Robinson 2001). It seems at first blush that the relationship between legal knowledge and compliance is crucial and quite simple. The less people know the law, the less likely they will follow such a law. And therefore it is vital to know whether people actually know the law.

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This chapter reviews the body of empirical work about whether people actually know and understand the law. In doing so, it will show that studies mostly find that neither laypersons nor specialists have sound legal knowledge, and also that knowledge of the law is weaker in some areas than in others. The chapter will also show what factors shape people's legal knowledge, and here it will highlight how important people's norms are in shaping what they think the law is. The chapter will conclude by drawing out the implications of these findings for compliance. Here it argues that the link between legal knowledge and compliance may not be as linear and simple as it may seem, as a lower level of legal knowledge does not automatically mean that there will be lower compliance.

3.2.2 THE EXISTING BODY OF EMPIRICAL WORK ON LEGAL KNOWLEDGE

Doing a search about legal knowledge does not easily yield empirical studies about whether people know the law. A first search using the term 'legal knowledge' will produce a range of influential literature that focuses on other questions. As such, there is socio-legal work using the term 'legal knowledge' that discusses legal consciousness and that focuses on how people see their relation to the legal system rather than on whether they know the law itself (i.e. Sarat and Felstiner 1989; Gallagher 2006). There is legal anthropological work, most importantly by Annelise Riles, on how legal knowledge relates to the hegemony of legal instrumentalism, especially in the context of human rights (Riles 2006). Similarly, there has been work from legal scholars in the critical legal studies and feminist legal studies traditions that focuses on how the complexity of the law and legal language makes legal knowledge a form of power that can exclude the weak and poor from the legal system (i.e. Kennedy 1982; Matsuda 1988). A third strand of work using the term 'legal knowledge' is technical in nature and focuses on how firms can develop systems to manage legal knowledge (e.g. Bench-Capon and Coenen 1992; Edwards and Mahling 1997; Bench-Capon 2015). Finally, there are some legal studies that have looked at the implications of empirical work on whether people know the law for protection of their rights, for instance in the sphere of employment law, without, however, providing new empirical data (i.e. Estlund 2002; Rudy 2002).

While these studies give important insights into what legal knowledge means for access to the legal system, power and inequality in relation to the law, the relationship between the law, society and the market, and how to design technical systems to manage complex legal knowledge, they do not provide us with empirical knowledge about whether people actually know the law.

Fortunately, there is a body of work that empirically assesses whether people know the law. This chapter focuses on English-language work and most of that work again studies legal knowledge in the United States and some in the United Kingdom. The oldest work reviewed here is from the late 1960s (Cortese 1966) and early 1970s (Williams and Hall 1972; Sarat 1975; Saunders 1975) and each decade has seen about five new papers since. So far, this body of work has remained quite fragmented and has largely not sought to draw out its implications for compliance (here an exception is Darley, Carlsmith and Robinson 2001). Within the body of work assessed here there are three review studies, an older one by Sarat reviewing five studies from the late 1960s and early 1970s (Sarat 1976/7), and two recent ones both on legal knowledge of education law, one reviewing twenty-eight empirical studies (Littleton 2008) and the other reviewing seventy-seven studies (Eberwein III 2008).

Most studies analyse legal knowledge in light of a particular legal domain and a particular issue (family law and divorce rights, labour law and worker rights, health law, criminal law

and education law). There are some broader studies that assess legal knowledge across domains (Williams and Hall 1972; Sarat 1975; Albrecht and Green 1977; Denvir, Balmer and Buck 2012; Denvir, Balmer and Pleasence 2013). Also, we see that some studies have focused on the legal knowledge of particular experts (doctors, teachers, school principals) and laypersons. Moreover, we see that some studies focus on whether people know their rights (labour and family law) and others on whether they understand their duties and what is legally allowed (criminal law and education law).

While the review here does not pretend to be exhaustive, even for English-language studies on the USA, it does offer a variety of arenas and subjects where legal knowledge has been researched to allow insights to be gained into the extent of the legal knowledge that people have. Some of these studies also allow us to probe further and understand what explains the variation in legal knowledge amongst the populations and subjects studied.

Before we turn to the existing body of empirical work on whether people know the law, we shall briefly discuss issues related to the methods of such work and how they have sought to assess legal knowledge.

32.3 METHODS TO MEASURE LEGAL KNOWLEDGE

A scientific assessment of whether people know the law is no easy task. As Sarat in his classic article on the study of legal culture states, '[m]easurement of knowledge of the law is always problematic' (Sarat 1976/7: 450). There have been three broad approaches to assessing legal knowledge with varying degrees of limitations.

32.3.1 *General Self-Reports on the Level of Knowledge*

The first method seeks to ask subjects to self-report what they themselves think is the level of their knowledge. An example is Winter and May's study about how legal knowledge affects compliance motivations amongst Danish farmers (Winter and May 2001). Their measurement of legal knowledge, which they called 'knowledge of rules', consisted of respondents to a survey indicating their agreement with the following statement: 'I believe I am well informed about environmental rules that apply to farming.' The core problem with this approach is that it does not actually measure legal knowledge. It does not test whether people have legal knowledge. Instead it measures whether they think they have such knowledge. In other words, it measures the level of confidence they have in their legal knowledge. People may have a high level of confidence even though they have limited legal knowledge, and vice versa; some may know more about the law than others but still feel that they do not know much. Because of this fundamental problem with this method, this chapter does not discuss findings using such self-reported levels of knowledge. As well as Winter and May's study, the works by Denvir and colleagues (Denvir, Balmer and Buck 2012; Denvir, Balmer and Pleasence 2013) have also used this approach as one of their two methods for assessing legal knowledge.

32.3.2 *Open Questions about Legal Knowledge*

The second method uses open questions to ask people to report what sort of rights they have. As Denvir and colleagues, whose two papers reviewed here are the only studies that use this method, explain, 'in this study we explore how individuals with one or more civil

or social justice problems respond when asked to briefly describe their rights/legal position in the context of a quantitative survey' (Denvir, Balmer and Buck 2012: 143). The advantage here is that the survey does not indicate that it is after legal knowledge and thus it is less likely to sway people's knowledge. In addition, it allows subjects to report what they think and, in that way, it gathers unexpected information that comes fully from the perspective of the subject studied. However, this approach has major downsides. It is very difficult to draw conclusions about the extent to which people do or do not know the law. Denvir and colleagues have an elaborate method of analysing the raw data they derive from their open questions. They code answers in seven categories that capture what sort of discourse people use to state their rights, including, for instance, a factual situation (stating what the problem was they faced), a value judgement (stating whether they were right or wrong about their rights), a broad notion of rights (referring to human rights, for instance), indicating a lack of knowledge, and finally framing it correctly or incorrectly in terms of legal rights. An assessment of legal knowledge should of course be about the last two categories, namely whether people are right or wrong in how they see their legal rights. The problem with the open-question approach is that when people frame their rights simply as something factual or something very broad related to human rights or as a value judgement, it is impossible to say whether they do or do not know the law. People who frame their answer in a factual or value judgement way might still have sound legal knowledge but just not frame their answer this way. And people who correctly make statements about human rights might still be wrong about the exact rights in consumer law, or they may still be correct about those. Because the open-question approach, then, does not provide a clear measure of legal knowledge, the present chapter will not review work that has used this approach.

32.3.3 *Factual Questions about the Law (with or without Vignettes)*

This leaves the third method. The third method asks factual questions about the law. There have been several approaches.

An early approach, as used, for instance, by Williams and Hall, would present subjects with law-like statements and ask them to indicate whether these were part of the relevant law being studied (Texas law in this case) (Williams and Hall 1972).

Another approach is to ask respondents to indicate whether particular hypothetical behaviours are lawful or not. Here a good example is Kim's work on people's knowledge about applicable employment-at-will rules (Kim 1999). She would present a scenario such as 'Company discharges employee in order to hire another person to do the same job at a lower wage. Employee's job performance has been satisfactory.' Subjects are then asked to indicate whether the discharge is lawful or unlawful. And the survey instructs the respondents to '[a]nswer each question according to whether you believe *a court of law* would find the discharge to be lawful or unlawful, NOT what you would like the result to be' (Kim 1999: 508).

Other studies similarly ask factual questions about how the law applies to particular scenarios, using vignettes. Some of them use more elaborate, longer vignettes. One example is Darley and colleagues' study of lay knowledge of state criminal law in different American states, which uses elaborate little stories of five to seven sentences complete with fictional characters engaging in what in some states would be and in other states would not be criminal behaviour (Darley, Carlsmith and Robinson 2001). Even more elaborate is Pleasence and Balmer's work on people's knowledge of family law. Their study provides

a complex multi-step scenario that involves a couple's sequences of events: for instance, the couple (John and Sarah) break up before they have children, or, instead of breaking up, John dies without leaving a will. Respondents would then be asked specific questions in relation to the legal rights at play here, such as, for instance, whether in the case of the break-up Sarah would have a claim to financial support from John or in the case of John's death whether Sarah automatically stood to inherit his belongings or savings (Plesence and Balmer 2012: 309).

Although asking these factual questions about what is in the law, or better how the law applies to particular circumstances, offers a better way to understand the amount of legal knowledge people have, there are still a number of issues. These issues are not as problematic as with the general self-reports or open questions since the studies do not really report on legal knowledge, but they have to be considered when reading the remainder of this chapter. A first issue is that asking people to indicate what is in the law or what is legal or illegal or what are people's rights or not may not just measure their knowledge but also shape their knowledge. Here a particular problem may be that people do not like to indicate that they do not know and, especially in survey formats that have a true/false or lawful/unlawful binary option, as frequently used here, it may lead to guessing rather than expressing knowledge (cf. Denvir, Balmer and Buck 2012).

A second issue is that asking factual questions automatically means limiting the questions to a few particular aspects, or articles, of the law. It is impossible to have legal knowledge of all the rules even within a particular area of law. Relatedly, as a third issue, this also means that the focus of the questions shapes the outcome of the study. As no one can be expected to know all the intricacies of any particular law, a study can be designed in such a way that most people would fail. A proper design should take account of this. Van McCrary et al.'s (1992) study of legal knowledge amongst physicians is explicit about how it sought to address this issue: 'We did not design the questions to be tricky or particularly difficult; nonetheless, accurate responses would require knowledge of specific provisions of Texas law pertinent to clinical practice' (Van McCrary et al. 1992: 365). Of course, a problem remains in how scholars can assess what 'tricky' or 'particularly difficult' entails. And also, the level of difficulty of the questions still influences the outcome of the study. So, a study using simpler questions is more likely to find higher levels of legal knowledge than a study that uses more difficult questions.

A third problem is how to verify whether the subject's legal information is correct or not. While some aspects of the law may seem simple and straightforward, much of the law is open to interpretation and often through a complex array of court case rulings, some of which may be conflicting. And here the specific context and facts of the case are important. As Sarat has argued, 'the content of legal rules is not determinable in the abstract but only in specific situations; thus knowledge of the law can never be precise since legal rights are always at the mercy of events' (Sarat 1976/7: 451).

A fourth problem here may be that laypersons, in contrast to lawyers, have a very different understanding of the meaning of basic legal terms that also exist in ordinary language. Here a series of studies on how juries apply criminal law terms for culpable mental states as outlined in the US Model Penal Code, including purpose, knowledge, recklessness and negligence, shows how lay interpretations of these terms do not necessarily align with proper legal interpretations (Shen et al. 2011; Ginther et al. 2014; Ginther et al. 2018). So, when non-lawyers report on questions about the law, their answers may have a different meaning from those of lawyers. This may mean that even when laypersons give an answer

that is in line with the language of the law, it may have a different meaning for them from that of the law.

A fifth set of problems is general survey problems of subjects wishing to respond in a socially desirable way. This may shape what they report on surveys in ways that are hard to predict and be accounted for by researchers (cf. Denvir, Balmer and Buck 2012).

32.4 EMPIRICAL FINDINGS ABOUT LEGAL KNOWLEDGE

With all these limitations considered, this section will outline the key findings from empirical studies about legal knowledge. It will, as explained earlier, use only empirical studies that have used factual questions about the law, both those that do not and those that do use vignettes.

32.4.1 *Lay Knowledge of Employment Law*

Within the sample of studies this chapter reviews, only one author, Pauline Kim, has studied whether people know employment law using factual questions (Kim 1998, 1999). Work by Denvir and colleagues also has some information about how people view their labour rights, but it is not discussed here as it does not use factual questions.

Kim's study sought to understand whether American employees were aware of their legal protection under employment-at-will contracts. Her research first studies this in Missouri ($n = 337$) and later in California ($n = 281$) and New York ($n = 303$). The study presented respondents with eight statements each describing a particular reason for discharge and asking respondents to indicate for each whether the discharge was lawful or unlawful according to how a court would see it. Of these eight statements, six were diagnostic questions (which were used to assess the level of knowledge) and two questions were deemed too easy to be used to assess knowledge. The study found that Missouri respondents were able to answer 51 per cent of all eight questions correctly, and 40 per cent were able to answer the six diagnostic questions correctly. The study also found that respondents especially answered questions wrong by overestimating the amount of protection that workers have, so in cases where a particular discharge was lawful (for instance when the employer intended to hire someone else for the same job at a lower wage), many respondents were prone to indicate that it was not allowed legally. Error rates for these lawful discharges ranged between 79.2 per cent and 89.0 per cent (Kim 1999: 456). Moreover, Missouri respondents widely shared erroneous beliefs about the law: '[F]ewer than 10% were able to answer more than six diagnostic questions correctly' (Kim 1999: 456). Kim used another part of the survey to assess knowledge of particular circumstances under which a company discharges an employee in order to hire a lower-wage replacement. Here it has four statements all indicating either text in the company manual or correspondence from the company to the employee, including, for instance, that the company personnel manual states that the '[c]ompany will resort to dismissal for just and sufficient cause only'. Again, respondents were asked to indicate for each of the circumstances whether it was lawful for the company to discharge the employee in order to hire a cheaper replacement. Here again, the study finds that Missouri employees were mostly mistaken and overestimated their protection. Error rates here ranged from 62.6 per cent to 84.9 per cent (Kim 1999: 459).

Kim subsequently conducted the same survey in New York and California. In California she found that, similarly to Missouri, respondents were able to answer 40 per cent of the

diagnostic questions correctly, whereas in New York the number was even lower, at 25.2 per cent. The study further found that in all three states the error rate was widespread and existed amongst a broad range of respondents in the samples.

As such, Kim concludes that ‘the data from California and New York confirm findings from Missouri that workers are seriously mistaken about their protections under the law and that erroneous beliefs are widely shared’ (Kim 1999: 459–60).

Kim also sought to understand what can explain the variation in the lack of legal knowledge. To do so, she first assessed whether differences in the details of the legal limits and exceptions to the at-will employment rule shaped error rates in respondents’ responses. Here she found no clear evidence for such an effect. Furthermore, she did not find that the general sense of legal protection and political climate that may offer such protection as it differs in these three states was clearly related to error in reporting about legal protection. Nor did she find that legal knowledge varied for respondents with different ages, union affiliation or experiences in being fired. The only exception was that in Missouri, surprisingly, an employee that was fired would become *more* – not less (as would be expected) – likely to mistakenly overstate their legal protection against discharge. The only three person-related variables that did predict higher knowledge were education, income and race, with higher scores amongst more educated richer respondents and lower scores amongst black and Hispanic respondents.

Kim also provides information about how respondents develop their ideas about what is lawful and unlawful and thus how they come to be mistaken about employment law and overestimate their legal protection against discharges. Analysing her data in light of findings about norms, Kim argues that people may come to confuse the law and their own personal norms (what they hold that their rights should be).

A recent study of Welsh and English laypersons in relation to their employment rights found similar findings. Using data from the 2010–12 English and Welsh Civil and Social Justice Survey, the paper sought to analyse the extent to which citizens have sufficient knowledge of the law in these areas. The survey contained detailed scenarios presenting employment rights cases (as well as housing and consumer scenarios, to be discussed in Section 32.4.4). And for each scenario respondents were asked to answer a series of questions for particular elements of the scenario that involved either their rights or their duties. The study sample included 966 respondents who answered the scenario questions. The study found that 66 per cent of respondents answered four of the six questions correctly, 37 per cent answered five questions correctly and only 13 per cent got all six questions correct. The study also assessed whether people who worked as an employee and those that had also reported employment problems had greater knowledge. Here they found that being an employee did lead to higher knowledge, but having experience reporting employment problems did not (Plesence, Balmer and Denvir 2017).

32.4.2 *Lay Knowledge of Criminal Law*

Several scholars have sought to understand how ordinary citizens know key aspects of both procedural and substantive criminal law.

The earliest study is by Sarat who, in 1975, sought to empirically assess popular support for the legal system. He conducted a study amongst citizens in Wisconsin ($n = 220$) in 1973. As part of the questionnaire, he included questions about legal knowledge. He asked respondents to indicate whether particular statements related to rules in the law were true or false or

to indicate that they did not know. Of the ten statements, six concerned general aspects of criminal law. Statements included, for instance: 'If an innocent man is arrested, it is up to him to prove that he is not guilty' and 'A man who has committed a crime can be made to answer questions about the crime in court.' His findings show that there is variation in the legal knowledge of citizens. Even though, for all statements, more respondents answered correctly than not, rates of knowledge varied. As such, an overwhelming majority (96.4 per cent) of Wisconsin citizens in 1973 knew that the police had to inform them of their rights before questioning them. But only 47.7 per cent correctly knew that suspects cannot be forced to answer questions in court. And, thus, more than half of the respondents did not know one of the core principles of criminal procedure in the United States, the protection against self-incrimination (Sarat 1975).

In 1977, Albrecht and Green also studied people's legal knowledge of criminal law. They studied citizens from rural, semi-rural and urban (both poor and minority and non-poor and non-minority) populations in a Rocky Mountain state ($n = 398$). To test legal knowledge, respondents were asked to indicate whether statements indicating legal duties or rights were false or correct or that they did not know. Five of the ten statements concerned criminal law, such as: 'In a trial, the presumption of innocence means that an accused person must prove charges are false.' Similarly to Sarat's study, Albrecht and Green (1977) also found variation in legal knowledge about criminal law. Two of the five statements had a very high number of correct responses. These concerned people's right to an attorney in criminal trials (86 per cent correct) and the police's duty to inform suspects of their constitutional rights when they perform an arrest (93 per cent correct). On other key issues of criminal procedural law, citizens were, however, frequently mistaken. These included the right against self-incrimination (48 per cent correct), the presumption of innocence (40 per cent correct) and the protection against double jeopardy in criminal cases (55 per cent correct) (Albrecht and Green 1977).

Another study about laypersons' knowledge of criminal law concerns the knowledge of jurors and potential jurors. Reifman, Gusick and Ellsworth (1992) studied citizens in Michigan ($n = 224$) who had been called for jury duty. They compared answers to their questions between those citizens that ended up serving as jurors and those who were not selected. They asked the citizens twenty-nine questions about relevant Michigan criminal law for various crimes; ten questions concerned procedural duties for juries and nineteen questions concerned substantive criminal law. The statements were taken from the Michigan Criminal Jury Instructions and had, where necessary, been reformatted to reduce excessive legalistic text. Similarly to the earlier criminal legal knowledge studies, respondents were asked to indicate whether statements were true or false or that they did not know. Sample statements include: 'In reaching a decision, the jury may consider the consequences of their verdict' and 'A person who gives a bottle containing illegal drugs to another person without knowing what is in the bottle is not guilty of delivering a controlled substance' (Reifman, Gusick and Ellsworth 1992: 545). Their study found that for the ten questions about the duties and procedural rules for juries, on average respondents who had served on criminal juries (and who had received instructions) got 4.78 (or 48 per cent) correct, those that had sat on civil juries 4.18 (42 per cent) correct, and those who had not been selected as jurors and sat in trials got 3.81 (or 38 per cent) correct. So, the study concluded that receiving instructions and serving on a jury did improve legal knowledge significantly – however, and this is most important, not to a level of being able to answer even half of the questions correctly, or of being aware of one's own lack of knowledge, with

only 10 per cent of the criminal jurors and 11 per cent of the civil jurors opting for the 'I don't know' option. The study found similar results for substantive law, where those that had served on criminal juries and had been instructed on relevant aspects of substantive criminal law (such as theft, sexual crimes, assault and armed robbery) were not knowledgeable about such crimes, answering on average only 41 per cent correctly, which was only marginally higher than those without instructions, who got 35 per cent correct, a difference that was found not to be statistically significant (Reifman, Gusick and Ellsworth 1992: 547–9).

Two further studies have sought to understand more deeply whether people understand their state's substantive criminal law. The first focused on whether people understand the different levels of criminal liability for different stages of attempts at crime. Darley, Sanderson and LaMantia (1996) presented a sample of local community members ($n = 20$) and undergraduate students ($n = 28$) in New Jersey with a survey that presented them with criminal attempt scenarios. These scenarios all described instances where someone had attempted either a murder or a robbery (six scenarios for each level of attempt from *thought only* through *substantial step* to *dangerous proximity* to finally *completed offence*). Respondents would have to indicate first what they thought would be an appropriate sentence and after that what sentence they thought the criminal codes of New Jersey would assign in each case. The study first of all found that respondents did not distinguish between what they themselves thought was the appropriate liability and what they held that the law would assign. And second, the study found that in so reporting what the law would assign, the respondents were largely mistaken. As the authors conclude, '[i]t is obvious that our subjects deeply misunderstand the New Jersey state codes' (Darley, Sanderson and LaMantia 1996: 416). Similarly to what Kim argued about employment law knowledge, Darley and colleagues also found that there is a link between what people think is in the law and what they themselves hold to be right (their norms): 'Most citizens hold the (erroneous) belief that the legal code matches their moral intuitions about the liability levels that should be assigned to various attempts' (Darley, Sanderson and LaMantia 1996: 419). Their conclusion based on this is that the legal code should be reformed to more closely match such moral beliefs, rather than trying to educate people in the law and change such morals.

The fifth study about criminal legal knowledge, by Darley, Carlsmith and Robinson (2001), again studied whether people are aware of the criminal laws of their states. It studied this amongst participants from four states (Texas, Wisconsin, South Dakota, North Dakota) ($n = 203$). Participants were presented with elaborate scenarios of four potentially illegal behaviours, including violating a duty to assist a person in trouble, violating a duty to retreat prior to the use of force in self-defence, failing to report a known felon, and using deadly force in order to protect one's property. Respondents were asked to indicate for each scenario what they thought the appropriate punishment was, and then to indicate what their state would consider an appropriate punishment, both on a 13-point scale. The study found that although state law was markedly different for these four scenarios, for three of the four scenarios they did not find that citizens from the state that was the outlier (and that would criminalise behaviour that others would not) came to a different prediction about state punishment. The exception was that Texans do clearly know that their state allows the use of deadly force to protect property. The authors conclude from this that 'in three cases, state law does not appear to be a factor in how people come to "know" their state law', and that 'people do not seem to be aware of the laws of their state' (Darley, Carlsmith and Robinson 2001: 175). Moreover, their study finds that for the most part people do not clearly develop

better knowledge of their state's criminal law if they are better educated or if they have lived longer in that state. Darley, Carlsmith and Robinson (2001) also found that there was a high correlation between what sentence people would assign themselves and what they predicted the state would assign. And thus, similarly to Kim's (1999) argument and Darley, Sanderson and LaMantia's (1996) earlier findings, people tend to conflate what they hold personally with what they think is the law: '[T]hey guess[ed] that the law of the state was what their personal opinion thought it should be' (Darley, Carlsmith and Robinson 2001: 181).

The final study reviewed here about criminal legal knowledge concerns whether mothers of youth offenders know the law (Cavanagh and Cauffman 2017). This study analysed 324 dyads of mothers and their sons, all first-time juvenile offenders ($n = 648$). The study built on earlier work that had found that youths do not have proper knowledge of criminal law and procedural rights (this work is not included in our review here, which focuses on adult legal knowledge, but see, for instance, Grisso et al. 2003; Goodwin-De Faria and Marinos 2012). It assessed the mothers' legal knowledge about criminal law by asking them to indicate the correctness of thirty-eight statements that relate to legal rights, roles and procedures in the juvenile criminal procedure, and to answer six multiple-choice questions in response to a short scenario. The study found that mothers on average got 66 per cent of the questions correct. Mothers were most mistaken about issues related to probation and plea bargaining, and least mistaken about basic courtroom procedures. The study found an association in that mothers with prior arrest experience had better knowledge than those without prior arrest experience. It also found that Latina women knew less than any other racial group, that black knew less than white, and that women born in the United States knew more than women born abroad.

32.4.3 *Lay Knowledge of Family Law*

The third and final body of work that assesses laypeople's knowledge of the law focuses on family law. As most people have familial relations and thus potentially face disputes or rights issues there, knowing their rights in such relations is vital. A first study about whether people know family law was conducted in 1973 amongst adult residents in two communities in Oregon State ($n = 309$). Respondents were asked to answer factual questions in relation to applicable family law issues such as the age of majority, the rights of welfare families to decide about birth control, the rights of illegitimate children, and minors' rights to birth control information and to medical treatment. The study overall found that knowledge of family law was underdeveloped. Respondents on average were able to answer just over half of the questions (4.3 out of 8). The study found that there was a big difference in their knowledge where for some issues (such as the age of majority and the rights of illegitimate children) people were far more knowledgeable (with 66 per cent answering correctly) and for others (such as minors' rights to information about birth control and to medical treatment) they provided mostly (also about 66 per cent of the sample) wrong answers (Saunders 1975: 71). The study also found that women were more knowledgeable than men, while no other demographic variables (age, occupation, education, religion) were associated statistically with the level of legal knowledge.

A more elaborate study of the legal knowledge of family law was conducted in the UK. In the article 'Ignorance in Bliss', Pleasence and Balmer set out to understand how well British adults know their own family law. The study uses data from a large nationally representative survey ($n = 3,806$). The survey used an elaborate scenario presenting four hypothetical major

family-related events in the lives of a couple, John and Sarah. Respondents were asked for each event to indicate (yes, no, don't know) their answers to a series of questions about what legal rights or legal options Sarah had. The study also employed two experimental elements: first, it randomly assigned respondents scenarios where John and Sarah were married and where they were legally cohabiting; and second, it randomised the duration of such a marriage or cohabitation.

The study concluded that there is a large amount of error in how respondents see the legal rights and options in these instances of family law. One example is that 52 per cent of the respondents were wrong in believing that a financially dependent cohabitant has a good legal claim to financial support when separating after ten years; 48 per cent were wrong to believe that a married spouse will not automatically inherit their partner's property when there is no will; 47 per cent of the respondents were wrong that a cohabiting father who fails to meet the legal requirements for 'parental responsibility' has the right to decide on 'important medical treatment'; and 36 per cent were wrong to believe that a married father does not have such a right. As we have seen with criminal legal knowledge, there was variation, and there were issues where respondents' answers were more often correct: for instance, only 14 per cent were wrong in holding that a partner automatically inherits from a deceased cohabitant when there is no will, and 20 per cent were wrong in holding that a married father has no legal responsibility to provide financial support for a child after a break-up.

Just as we have seen in studies about employment law and criminal law, here again the study finds that there is a relation between what people think is the law and what their own beliefs and social attitudes are about the matters that family covers. As the authors conclude, 'in general, public legal understanding may be substantially driven by attitudes. Consequently, our findings also highlight additional obstacles that public legal education initiatives must overcome in order to be successful . . . People's immersion in the social world and exposure to social attitudes therefore act as obstacles to being receptive to contradictory information about the law' (Plesence and Balmer 2012: 325).

32.4.4 *Lay Knowledge of Housing and Consumer Rights*

A recent study by Plesence, Balmer and Denvir (2017) sought to understand how English and Welsh citizens know basic rights and duties in relation to consumer and housing rights. Using data from the 2010–12 English and Welsh Civil and Social Justice Survey, the paper sought to analyse the extent to which citizens have sufficient knowledge of the law in these areas. The surveys contained detailed scenarios presenting housing and consumer rights cases (as well as employment scenarios, the findings of which we have already discussed). And for each scenario, respondents were asked to answer a series of questions on particular elements of the scenario that involved either their rights or their duties. The sample included 1,005 respondents who answered the questions about the housing scenario and 982 who focused on the consumer scenario. Overall, the study found that respondents did only slightly better than if they had guessed the right answer (as the study used a binary yes or no option), with an average percentage of correct scores of 59 per cent across the three scenarios studied. The study found that informants performed worst in consumer-related questions. For consumer law, only 20 per cent got three of the five questions correct, 3 per cent got four out of five correct and only 0.3 per cent got all correct. Housing law had higher scores, with 77 per cent getting four out of six correct, 49 per cent getting five out

of six correct and 13 per cent answering all six correctly. What is interesting here is that respondents had indicated greater confidence in their consumer law knowledge than in their housing law knowledge. The study further analysed whether people who needed more knowledge of their rights had better knowledge. Here it looked in particular at different housing law knowledge levels between people who were renting their house and those that were not. The study found no significant knowledge difference here. So, people who needed to know more about their rights, that is, renters, were not more knowledgeable. The study concluded that citizens were not well informed; in fact, they had ‘substantial deficits’ in understanding their legal rights and responsibilities. The authors noted that such deficits exist even when such rights have a ‘special bearing’ for them (Pleasence, Balmer and Denvir 2017).

32.4.5 *Expert Legal Knowledge in the Educational Field*

Quite surprisingly, there has been a very large body of empirical work on knowledge about law related to primary and secondary education, mostly focusing on whether educators or educational managers, such as principals, know the law. The body of work is so large that we will not assess it study by study as we have done so far, but instead discuss its core findings across a range of studies. Fortunately, there are two review studies from 2008 that provide an overview of the state of the field up to that year. The first study by Littleton reviews twenty-eight previous studies (Littleton 2008), and the second by Eberwein reviews seventy-seven studies (Eberwein III 2008). Here we shall use these two reviews to get an overall picture of this large body of work that goes back to 1978. The studies reviewed were largely of a quantitative nature and used either factual questions about the law with yes/no/don’t know options or vignettes, similarly to what we have seen in the studies discussed so far. Studies looked at the legal knowledge of different actors in the educational system, including administrators (principals and superintendents), teachers, staff, and also students and parents. And most studies reviewed were conducted within one state.

The studies reviewed show a clear legal knowledge deficit amongst educators and administrators. As Eberwein concludes, ‘[t]he [seventy-seven] studies reviewed indicate that educators do not have an acceptable level of public school law knowledge. While each researcher polled educators using a different set of survey questions and, even more problematically, established a level of competence that varied, most agreed that legal knowledge in all groups (teachers, principals and superintendents) was unacceptably low’ (Eberwein III 2008: 49–50). All but one (Shaw 1984) of the reviewed studies of the legal literacy of principals concluded that principals lacked sufficient legal knowledge. The reviews similarly found that the legal knowledge of superintendents and general administrators was weak, with average correct scores on knowledge questions in one study of about 50 per cent (Abegglen 1986), while another study (Clark 1990) reported superintendents as being ‘only marginally knowledgeable’ (Eberwein III 2008: 51), and another study focusing on the knowledge of legal rules about teacher evaluations found that knowledge was no better than chance (Zirkel 1996). Similarly, studies concluded that teachers ‘were unfamiliar with school law’ (Eberwein III 2008: 52), and as Littleton found from surveys of the body of work on teachers’ knowledge of law, ‘teachers possess a dismal comprehension of education law and legal issues pertaining to their jobs’ (Littleton 2008: 72). One large study of 1,300 teachers found, for instance, that on average they got 41 per cent of 12 questions about students’ rights correct and 39 per cent of questions about teachers’ rights and liabilities (Schimmel and Militello 2007). Studies

reviewed characterised teachers' legal knowledge as insufficient to 'maintain a safe school environment and/or protect themselves from tort liability' (quote from Eberwein III 2008: 53, summarizing Moore 1997) and that teachers 'lacked basic knowledge on laws that affect children' (Eberwein III 2008: 545, summarizing Sametz, McLoughlin and Streib 1981).

The reviews of the large body of work on the legal knowledge amongst school educators and administrators also show what variation there is. Even though the general conclusion is that knowledge is weak, it is not equally so. There are clearly areas of the law where legal knowledge is relatively worse than in others. Weak areas of knowledge include the Bill of Rights, religious legal issues in education, most aspects of tort law (except liability for abuse) and Supreme Court decisions (relevant for education, such as due process rights for students, e.g. *Goss v. Lopez*). Teachers have a weak grasp of the legal rights of students and disciplinary procedures (and issues such as searches and seizures), while principals have a better understanding of such rights and procedures (Eberwein III 2008; Littleton 2008).

The studies reviewed have also tried to see whether variables related to the demographics of the respondent (educator or administrator) or the school were associated with the level of legal knowledge. Most studies reviewed did not find a significant correlation here. There are, for instance, mixed findings about whether principals, superintendents, teachers and staff have a better grasp of the relevant law, with comparative studies across these groups reporting different results. Similarly, the experience of educators and administrators was not found clearly across the reviewed studies to be associated with more or less legal knowledge. There seems to be some indication that secondary-level educators and administrators have a better level of legal knowledge than those at the elementary level, and also that older teachers have better legal knowledge (Eberwein III 2008; Littleton 2008).

32.4.6 *Expert Legal Knowledge in the Medical Profession*

There is also a body of studies about the legal knowledge of professionals in health-care services. The present contribution reviews eight such studies. There are two earlier studies from the 1980s about the legal knowledge of psychotherapists. One study by Shuman and Weiner assessed how well Texas therapists ($n = 84$) understood state rules on psychotherapist–patient privilege. It found that legal knowledge was lacking, as 55 per cent of the respondents did not know that there was a statute on such privilege, and, more importantly, only 22 per cent knew that legal confidentiality limits patients' disclosures (Shuman and Weiner 1981: 922). Their study concludes: 'The responses to the questionnaire from the group of psychiatrists surveyed indicated that the enactment of the psychotherapist–patient privilege statute in 1979 had little impact on the practice of psychotherapy. Undoubtedly, a major contributing factor was the therapists' ignorance of the enactment of the privilege statute' (Shuman and Weiner 1981: 922). A study by Givelber, Bowers and Blitch (1984) analysed how well therapists across the USA ($n = 2,875$) understood the duty of care toward third parties that a California Supreme Court decided (the Tarasoff decision).¹ The study found that while most psychotherapists had heard of the Tarasoff case, many did not have a proper understanding of the contents of its ruling. One in four had a partly mistaken understanding of when the Tarasoff duty of care applies. More importantly, the majority misunderstood what the duty of care entails exactly. It is also interesting to note that the majority of non-Californian therapists surveyed erroneously believed that they were bound by Tarasoff. The

¹ *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (Cal. 1976).

study argues that the limited understanding of the legal rules on the duty of care as they arise out of the vital court case originates in the complexity of the legal reasoning that the California Supreme Court used here (Givelber, Bowers and Blich 1984).

Van McCrary and colleagues conducted two studies to understand how legal knowledge plays a role in how physicians make end-of-life decisions with regard to terminally ill patients (Van McCrary et al. 1992; Van McCrary and Swanson 1999). The first study was conducted amongst hospital doctors in Texas ($n = 750$). The study administered a survey that included ten questions that tested knowledge on issues covered in a standard handbook in Texas medical law (*The Texas Medical Jurisprudence Examination*). The study found that on average respondents answered half of the questions correctly. And only about 23 per cent of doctors surveyed 'achieved a "passing" score of 70% or above' (Van McCrary et al. 1992: 368). And just like in other areas of law discussed earlier here, there was variation with some issues where doctors had a higher level of knowledge (for instance about how competent patients may legally refuse any treatment even if it results in their own death). The study found that internists had better legal knowledge than surgeons. And second, physicians who derived their legal knowledge mostly from colleagues scored lower in the test. In a second study, Van McCrary teamed up with Swanson to conduct a comparative study about legal knowledge and end-of-life decisions amongst patients in Texas (discussed in the study above) and Denmark ($n = 62$). The study found that Danish doctors had a much higher level of legal knowledge, as 74 per cent of the doctors answered 70 per cent of the questions correctly and passed the test, in contrast to the low 23 per cent in the USA. What is interesting about this comparison is that US doctors are less informed about the law, yet (as was also measured in these studies) they are more worried about the law's impact on their medical practice. Van McCrary and Swanson argue that 'legal defensiveness in the USA creates a climate of misinformation regarding medical law that is not present in Denmark' (Van McCrary and Swanson 1999: 20).

Saltstone, Saltstone and Rowe (1997) sought to assess the medical legal knowledge amongst Canadian family medicine residents ($n = 45$). Their findings were similar to those in the study amongst Texan doctors. They found that the residents answered about half the questions correctly. Also, there was variation, with all respondents answering some questions correctly (for instance whether comments might be construed as sexual abuse) and others with very low scores (for instance, only 11 per cent correctly answered a question about doctor–patient privilege, and 4 per cent answered correctly in relation to duties to report certain diseases). Respondents also indicated that knowledge of medical-legal issues was vital for providing good medical care and to avoid being sued, and they felt 'inadequately trained in and uncomfortable about dealing with these issues' (Saltstone, Saltstone and Rowe 1997: 669).

In 2008, Chate assessed the legal knowledge in relation to informed consent amongst orthodontists in England, Wales and Northern Ireland ($n = 179$). This study found that respondents provided correct answers about half the time (it found that scores varied for different issues). Orthodontists were least knowledgeable about aspects of consent such as what level of explanation they needed to give patients to get informed consent, and how to manage a patient who is unable to give consent. The study concluded that 'the results of this audit indicate certain key areas of deficiency in the knowledge and understanding of informed consent amongst consultant orthodontists' (Chate 2008: 665).

Finally, a recent study by White and colleagues (2014) looked at the legal knowledge amongst doctors practising end-of-life medicine in Australia ($n = 867$). On average, it found

that the mean correct response rate was 3.26 out of a possible 7 questions. It found that only 42 per cent of the overall respondents were able to get four or more of the seven questions correct. The study found that there were differences within the sample, with doctors in some states (e.g. Queensland) scoring much lower (25.7 per cent) than those in others (e.g. New South Wales, with 55 per cent answering four or more correctly). It also found that certain specialisms scored significantly higher than others, while other demographics such as age, country of degree and years of practice were not associated with the level of legal knowledge. The study also found that doctors were aware of their level of legal knowledge as their self-reported perception of their knowledge correlated significantly with how they scored in the knowledge test. Other interesting findings are that the more decisions doctors made about withholding life-sustaining treatment, the more knowledgeable they became, and that those with recent training had better knowledge. Overall, the study concluded that there is a knowledge deficit amongst the doctors studied: 'Our results demonstrate critical gaps in the legal knowledge of many doctors who practise end-of-life medicine' (White et al. 2014: 3).

In sum, in health care there is a clear lack of knowledge of relevant law. Here again we see that there is variation among some health-care providers and in some contexts, and for some legal rules there are greater amounts of knowledge than for others.

32.4.7 *Synthesis of Findings*

As a quick overview, Table 32.1 outlines the findings across the different domains. Based on this we can draw several conclusions. First and foremost, there are major gaps in the legal knowledge amongst both laypersons and professionals. Such knowledge deficits concern vital legal rules that provide basic rights relating to employment, the criminal justice trial, and marriage and divorce. And the lack of knowledge also covers areas of core concern to the professionals interviewed, such as school principals and end-of-life doctors. Most of the studies note that there is variation and that not all aspects of the law are understood equally well or equally poorly. And studies have also unearthed variables that can explain variation, yet when taken together we do not see a clear pattern emerge where certain demographics or other conditions would consistently predict greater legal knowledge. The findings in comparing physicians' medical legal knowledge in the USA and Denmark are particularly striking. Doctors who worry more about the repercussions of the law (those in the USA) are less knowledgeable about such law than their colleagues who do not have such worries (those in Denmark).

An important finding is that across several studies there is an association between what people think the law should be and what they themselves hold to be right and correct (their norms), and this shapes what they think the law is. And thus their sense of what the law should be influences their misunderstanding of the actual law. As such, there seems to be a link between (social and personal) norms and legal knowledge.

32.5 DISCUSSION AND CONCLUSION

Despite the inherent challenges in measuring legal knowledge, the empirical studies reviewed here all show that across domains and populations there is a lack of legal knowledge. This means that the laws as they have been drafted and designed do not arrive at the people whose behaviour such laws seek to influence, or that, if they arrive, the understanding of such laws is not complete. This is a key, yet underappreciated, empirical insight in regard to

TABLE 32.1 *An overview of empirical studies about legal knowledge*²

Domain	Type of actor	Studies reviewed	Core findings
Employment law	Lay	Kim 1998; Kim 1999; Denvir, Balmer and Buck 2012; Denvir, Balmer and Pleasence 2013; Pleasence, Balmer and Denvir 2017	People have limited knowledge about their employment rights. The knowledge they do have originates from their own views and norms of what the rights should be.
Criminal law	Lay	Sarat 1975; Albrecht and Green 1977; Reifman, Gusick and Ellsworth 1992; Darley, Sanderson and LaMantia 1996; Darley, Carlsmith and Robinson 2001; Cavanagh and Cauffman 2017	People have limited knowledge of core aspects of substantive and procedural law. Knowledge does vary and is better and worse for different aspects. Legal knowledge tends to converge with people's own views and norms.
Family law	Lay	Saunders 1975; Pleasence and Balmer 2012	People have limited knowledge of their core rights and duties in family law. There is variation with more knowledge on some issues and less on others. Women have better knowledge than men. People's knowledge of the law is shaped by their own norms.
Consumer and housing rights	Lay	Pleasence, Balmer and Denvir 2017	Overall, there are substantial deficits in how citizens understand their rights and duties. This is especially so for consumer law. The more confident people are of their rights, the lower their knowledge. Also, the more there is at stake, the less knowledge they have.
Education	Lay, professional	Core reviews by Littleton 2008 (reviewing 28 studies) and Eberwein III 2008 (reviewing 77 studies); examples of individual studies: Bowal 1998; Schimmel and Militello 2007; Militello, Schimmel and Eberwein 2009	Educators and administrators have limited knowledge of core aspects of the law that applies to their jobs (including elements of tort law). There is variation in knowledge with some issues with better and other with worse knowledge. No clear findings on demographic variation and legal knowledge.
Health	Professional	Shuman and Weiner 1981; Givelber, Bowers and Blich 1984; Van McCrary et al. 1992; Saltstone, Saltstone and Rowe 1997; Van McCrary and Swanson 1999; Chate 2008; White et al. 2012; White et al. 2014	Doctors, psychotherapists, and orthodontists lack knowledge about legal rules in relation to their practice. There is variation with better knowledge for some rules, some doctors, and some jurisdictions, and worse for others.

² We have excluded empirical studies about the legal knowledge of nonadults here. Examples include Saunders 1981; Grisso et al. 2003; and Goodwin-De Faria and Marinos 2012.

compliance. There is a large body in criminology about how objective punishment (the way the law is enforced) is not the same as subjective punishment (the way that potential rule-breakers perceive it) (Thornton, Gunningham and Kagan 2005; Apel 2013). Similarly, the way the law has been drafted and exists objectively and the way it is known and understood are not the same. Darley, Carlsmith and Robinson (2001) argued that the lack of legal knowledge undermines the *ex ante* function of law. And indeed, it seems that when people do not know the law, such law has trouble shaping their future behaviour. We will ponder three bigger questions here.

The first question is: Why do so many people lack legal knowledge? Here a first issue is the sheer size and complexity of the legal system and its myriad rules. In the early 1990s, it was estimated that in the USA 300,000 rules of corporate law exist that may be criminally enforced (see Coffee, Jr. 1991: 216³). This was over three decades ago, and these were just the criminally enforceable rules for corporations. Bear in mind that the California Vehicle Code is over 1,000 pages long. And the US Internal Revenue Code, which covers basic tax policies on things like income, gifts, estates and payrolls, is about 2,600 pages long.⁴ And this does not even include the thousands of pages of federal tax regulations.⁵ Or just go into any law school library and look at the giant halls with stacks and stacks of tomes with the primary sources of law, which is the applicable law that we're supposed to know.

An overwhelming amount of law is made less accessible because of the complexity of the legal language used in the legislation, and even more so by the complex legal reasoning that exists in relevant case law and judicial interpretations of statutes. A clear example of how this even undermines the legal knowledge of highly trained professionals was Givelber, Bowers and Blitch's (1984) study on how psychotherapists did not understand the intricacies of the California Supreme Court's Tarasoff decision about the duty of care that therapists have towards third parties.

Another reason why people have trouble knowing the law, which became clear in several of the studies, is that the law is often not aligned with people's own or the broader social norms. This makes it hard for people to trust their normative instincts in guesstimating what the law is. And all of this is made more problematic because most people do not have easy access to legal advice, let alone have such access on a daily basis for all rules that apply to their everyday existence. Even a CEO of a major Fortune 500 company cannot get legal advice that would cover all 300,000 criminally enforceable rules that their corporation must comply with.

A core underlying issue here, however, is that our legal system has been designed and operates with a look to the past, through an *ex post* perspective. The massive number of complex legal rules may operate perfectly well when they are applied to past cases. When bad behaviour has occurred, prosecutors and other lawyers can carry out legal research and in the massive body of legal rules and interpretations find those that apply to the case and develop their legal arguments about how to assign liability or in other ways respond to such facts from the past. This is how law is taught in law school and this is also how many people perceive the law to operate. However, if law truly is to prevent damaging behaviour and have an effective

³ Citing an estimate made by Stanley Arkin, a well-known practitioner in the field of white-collar crime, at the George Mason Conference in October 1990, which produced the symposium that Coffee's article came from (see also Leary 1990: 144 note 10).

⁴ www.slate.com/articles/news_and_politics/politics/2014/04/how_long_is_the_tax_code_it_is_far_shorter_than_70_000_pages.html.

⁵ CCH Tax Law Editors 2016.

ex ante function, it must somehow come to shape such behaviour before it happens and not just respond after the fact (cf. Darley, Carlsmith and Robinson 2001).

The second question is: Does less legal knowledge automatically mean that there will be less compliance? A linear view of the compliance process from legal rule to behavioural change would clearly answer this question in the affirmative: if people do not know the law, how can they make a decision to obey such law and conform their behaviour to the goals espoused in the law. This conclusion is too simple, however.

Firstly, the empirical work on legal knowledge has clearly shown that what people think is in the law is aligned with their own social norms and morals. This has two potential effects on compliance. If the social norms and morals happen to be aligned with the law, there can be compliance even if people do not have sound legal knowledge. And vice versa, the less the social norms are aligned with the law, the less such social norms can remedy the lack of legal knowledge.

A second reason why there can still be compliance even if people do not know the law is that people are part of organisations that have legal knowledge and that have translated relevant legal norms into the processes of such an organisation. Such organisational processes can steer behaviour to conform with the law without teaching people the exact contents of the law.

This, of course, does require the organisation to have sufficient legal knowledge and be able to develop practical, technological or normative interventions that effectively steer their members' behaviour. Here, recent work on regulatory, rule or legal intermediaries is extremely interesting. This body of work shows the importance of lawyers, managers, HR professionals and other organisational actors in transmitting, and also interpreting, the law into the organisational process. In doing so, they shape what the law means and as such construct the meaning of compliance (Talesh 2009, 2015; Edelman and Talesh 2011; Abbott, Levi-Faur and Snidal 2017; Gray and Péglise 2019; Talesh and Péglise 2019). Organisations may thus have intermediaries that can come to broker complex legal knowledge into lower levels of the organisation. This may help to decrease fundamental knowledge problems but it cannot fully alleviate them. A first problem is that there is so much law that not all of it can be transformed into understandable organisational rules and processes. And second, there may also be limited understanding of organisational rules. A third problem is that the existence of, and access to, such rule intermediaries is limited and unequal. Here Saunders' observation about the lack of legal knowledge in family law is telling:

The process of acquiring knowledge of pertinent laws is perhaps more problematic in relation to family law than it is in any other area of law. The family, as the least centralized of all our social institutions (Putney 1972; Vincent 1966), lacks specialists, i.e. 'corporate attorneys', who may act as a direct line of communication between the legal institution and the nation's millions of families. In the absence of such spokesmen, what knowledge of family law is diffused to the nation's families usually comes as a result of unco-ordinated and sometimes unintended efforts (Saunders 1975: 69).

And as a third caveat, compliance does not just result from an individual, rational, conscious decision to respond to the law, but may very well be driven socially, and through unconscious (and what may seem irrational) processes, or in some cases not even be the result of a free choice at all but the result of a lack of opportunity to engage in legally banned behaviour. In such situations, which are covered in depth in other chapters here on social norms (Chapter 28), on heuristics and biases in criminal decision-making (Chapter 36), and

on opportunity for crime (Chapter 35), knowing the law is never a prerequisite for compliance, as the process never occurs linearly from rule to behaviour with the learning of the rule as a vital step.

The third and final question is: What does all this mean for how to make laws and manage compliance? As we have just seen, the relationship between legal knowledge and compliance is not simple and clear-cut, that is, less knowledge, less compliance. This means that for areas of the law where we cannot expect there to be high levels of legal knowledge, there should be extra attention given to tapping into social and personal norms, as far as they exist, that can come to support the legal rules. It also means that in such instances, as much as possible, implementation of law should involve the use of factual and practical means that make rule-breaking harder and rule-obedience easier while not requiring actors to make a decision in response to specific rules of the law. Here we can think of interventions that sway people unconsciously or that take away options or choice, popularised as *nudges*.

However, there will be many instances where it is still important for law to change behaviour but where there will be a lack of supporting social norms or the ability or political will to use unconscious influences or reduce choice or opportunities. Here things will be much harder as the institutional problems that have caused the lack of legal knowledge need to be addressed. This means trying to align the law to social and personal norms (cf. Darley, Sanderson and LaMantia 1996), reducing the number of legal rules, and reducing the complexity of the law and its judicial interpretations. None of these interventions are easily possible in the current legal system we have, with the *ex post* perspective that is driving it. And, as such, the limited legal knowledge that empirical studies have found will remain a major challenge for compliance.

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